

**House Congressional Redistricting Subcommittee
November 3, 2021**

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EXHIBIT

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1 Rep. Sirois: Good afternoon. The Congressional Redistricting Subcommittee will come to
2 order. Kyle, please call the roll.

3 Kyle: Chair Sirois?

4 Rep. Sirois: Here.

5 Kyle: Vice Chair Tuck?

6 Rep. Tuck: Here.

7 Kyle: Ranking Member Skidmore?

8 Rep. Skidmore: Here.

9 Kyle: Representative Beltran?

10 Rep. Beltran: Here.

11 Kyle: Benjamin?

12 Rep. Benjamin: Here.

13 Kyle: Brown? Brown? Fabricio? Fabricio? Fetterhoff?

14 Rep. Fetterhoff: Here.

15 Kyle: Fischer?

16 Rep. Fischer: Here.

17 Kyle: Giallombardo?

18 Rep. Giallombardo: Here.

19 Kyle: Harding? Harding? Hunschofsky?

20 Rep. Hunschofsky: Here.

21 Kyle: Joseph?

22 Rep. Joseph: Here.

23 Kyle: Massullo?

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1 Rep. Massullo: Here.

2 Kyle: Morales?

3 Rep. Morales: Present.

4 Kyle: Perez excused. Plakon excused. Silvers excused. Toledo excused. Trabulsy?

5 Rep. Trabulsy: Here.

6 Kyle: Williamson?

7 Rep. Williamson: Here.

8 Kyle: Quorum is present, Mr. Chair.

9 Rep. Sirois: Thank you Kyle. Members a few reminders before we begin. Please silence
10 all electronic devices, and if you wish to make public comment, please fill out a speaker form
11 and turn into the sergeant's staff. Also a reminder for our members and presenters, please ensure
12 that you turn microphone on when you are speaking and off when you are finished.

13 Members, welcome back to our interim committee meetings. So far in this process, we
14 have covered an introduction to redistricting concepts, reviewed our website and current public
15 input opportunities, discussed our map drawing application's advanced functionality, and how
16 those tools can assist us in aligning our maps with our constitutional standards, as well as
17 demonstrated some the tangible examples of our constitutional standards within our currently
18 enacted congressional maps. I explained during our first committee meeting how important a
19 comprehensive educational effort is to understanding the full scope of redistricting. I hope you're
20 coming to appreciate that this not an easy task, nor will there be one clear-cut answer.

21 One of the last pieces of educational information we need to cover as a committee is the
22 legal aspect of redistricting, which includes applicable federal and state law as well as caselaw
23 related to this process, especially the Florida Supreme Court precedent that established following

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1 the 2012 redistricting cycle. This will directly impact how we view and apply our Tier One and
2 Tier Two standards. For this redistricting cycle, the House has retained outside counsel to advise
3 the chamber on state and federal law as well as relevant court precedent. For today's
4 presentation, our committee will be hearing from Andy Bardos. Mr. Bardos has been with Gray
5 Robinson since 2005 and was involved in the 2012 redistricting cycle as well as having
6 previously served as a special counsel in the Florida Senate. I'm glad you're with us today, sir.
7 Thank you.

8 Members, I want to differentiate that today's counsel presentation is for our education on
9 relevant redistricting law. It is not – it is not for discussing hypothetical scenarios or specific
10 policy decisions that may come before our committee. As I've mentioned before, there is no
11 correct map. When we begin reviewing district boundary lines, decisions will be weighed among
12 one another with the goal drawing a legally compliant map. As Mr. Bardos goes through his
13 presentation, I encourage you to take notes of questions that you may have. Once the
14 presentation is concluded, we will take questions from members on the content of the
15 presentation and then we'll move onto public comment. With that Mr. Bardos, welcome to the
16 House Congressional Redistricting Committee and you're recognized for your presentation.

17 Mr. Bardos: Thank you Mr. Chairman. My name is Andy Bardos. I'm an attorney with
18 the Gray Robinson law firm. I'll be providing an overview today of the legal standards that apply
19 to state legislative and congressional districts, with an emphasis, of course, on congressional
20 districts, given that this is the subcommittee for drawing congressional plans. The standards that
21 apply to the two, and the two contexts are very similar. I'll point out the differences, which are
22 few and but otherwise, the standards will be similar. So, the standards come from a number of
23 different sources, the United States Constitution imposes legal standards as does the federal

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1 Voting Rights Act and now the state constitution, which in 2010 was amended to add a number
2 of substantive legal standards that will guide out thought process in drawing new districts.

3 I'll begin with the federal Voting Rights Act, which was enacted in 1965 by Congress to
4 enforce the 15th Amendment. The 15th Amendment guarantees that the right of citizens to vote
5 will not be denied or abridged on account of race, and the Voting Rights Act was enacted to
6 govern a number of different aspects of election law. Two provisions in particular are relevant to
7 redistricting, and those are Section 2 and Section 5.

8 Section 2 of the Voting Rights Act prohibits a state from imposing election laws that
9 result in a denial or abridgement of the right to vote on account of race, color, or membership in
10 a language minority group. That's very broad language, but the U.S. Supreme Court in the
11 context of redistricting has refined that in a case called *Thornburg versus Gingles* and given
12 definition to that legal standard. *Gingles* was decided in 1986, and these slide shows the criteria
13 that the U.S. Supreme Court announced in the *Gingles* case, and these are the criteria that must
14 be present for Section 2 to apply. Section 2 applies to a particular region of the state where it
15 might require the drawing of a minority opportunity district.

16 The *Gingles* standard sets forth three preconditions. These three preconditions are
17 quantifiable and objective more so than the ultimate test, which is a totality of the circumstances
18 analysis, which we'll discuss in a moment. The first three criteria are here numbered on this
19 slide, and the general concept here is that if a minority population is sufficiently large that it
20 could be the majority in a single-member district, and it has voting preferences that are different
21 from that of the majority of the electorate so the majority of the electorate would usually defeat
22 the preferred candidates of the minority population, then the minority population might be
23 entitled to a district that gives them a majority population status and therefore the ability to

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1 control the outcome of that election. The three criteria encompass those ideas.

2 The first one is that the minority population must be sufficiently large and geographically
3 compact to constitute a majority in a single-member district. So this is the first standard that must
4 be satisfied. So in a congressional district, for example, with an ideal population in excess of
5 700,000 people for a total population, this would require a minority population that's relatively
6 compact in excess of 300,000 people. Of course for Section 2, we would use the voting-age
7 population only, not look at the total population, but that gives some idea of how large the
8 population must be before Section 2 could even apply. Not only must a minority population be
9 sufficiently large that it would constitute a majority of the voting-age population, it must be
10 geographically compact. Section 2 will never require the drawing of a district that is not
11 compact. It doesn't require the combining of populations that are remote from each other into a
12 single district that doesn't have a geographically compact shape.

13 But where the minority population is large enough to be the majority of the voting-age
14 population in the district and it is relatively compact, then we look at criteria 2 and 3, which
15 encompasses this idea of racially polarized voting. And racially polarized voting means that the
16 minority population prefers different candidates from the majority population, and therefore,
17 because the minority population is outnumbered, their preferred candidate will usually be
18 defeated. So in the situation where there's racially polarized voting and yet the minority
19 population could, depending on how the district is drawn, be a majority in that district, Section 2
20 might apply to require the drawing of a district that gives minority voters a majority in the
21 district.

22 It only applies if this final criterion is satisfied, which we see on this slide and this is less
23 objective. It's less quantifiable. It's based on the totality of the circumstances. We must ask

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1 whether members of the minority group have less opportunity than other members of the
2 electorate to participate in the political process and elect representatives of their choice. In
3 *Gingles*, the court enumerated various considerations that informed that analysis. The courts will
4 consider whether there are discriminatory election practices, whether there is racially polarized
5 voting, whether there have been racial overtones in campaigns, whether there has been
6 discrimination in other areas that affects the ability of a minority group to participate in the
7 political process, and all of that is considered in totality to determine whether minority voters
8 have the same opportunity to elect the candidates of their choice and to participate in the political
9 process as the majority of the electorate. If not, and if the other criteria are satisfied, then the
10 state is required to draw a district that provides minority voters with an opportunity to elect the
11 candidate of their choice by making them a majority of the voting-age population of that district.

12 That was Section 2. The other provision of the Voting Rights Act that can be relevant to
13 redistricting is Section 5. Section 5 is no longer effective, however, as of 2013 when the United
14 States Supreme Court decide the *Shelby County versus Holder* decision. We will cover it though
15 because the Florida Constitution has incorporated Section 5 principles into our state law, and so
16 it continues to apply to Florida's redistricting plans through the Florida Constitution. When it
17 was originally enacted, Section 5 was a temporary measure that was designed to cover select
18 jurisdictions and those jurisdictions were jurisdictions that back in the 1960s and 1970s had in
19 place what are called by the Voting Rights Act tests or devices. The best of example of that
20 would be a literacy test. These jurisdictions that had a test or device in place and also had
21 relatively low rates of turnout or registration among minority voters were identified by Congress
22 in the Voting Rights Act through a formula as being subject to Section 5, and so in Florida five
23 counties were identified as being subject to Section 5, but of course if there was a state law such

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1 as a redistricting plan that would apply to those five counties, then that state law was also subject
2 to Section 5 of the Voting Rights Act. What that meant was that a voting law that applied to
3 those 5 counties must not retrogress, and that means no backsliding, that minorities would not be
4 in a worse position than they were in before that law was enacted.

5 And in order to ensure that there would be no retrogression, the Voting Rights Act
6 required election law changes to be submitted either to the United States Department of Justice
7 or to the federal district court for the District of Columbia to be preapproved before it could go
8 into effect. This was considered by the U.S. Supreme Court to be a very stringent remedy or a
9 harm that was identified by Congress, and that's why in the *Shelby County versus Holder* case
10 the United State Supreme Court used Section 5 with some analytical rigor and it determined that
11 ultimately because facts had changed since the 1960s and '70s, this coverage formula that
12 determined which jurisdictions would be subject to Section 5 was outdated and could no longer
13 be applied because it was based on data that was 40 or 50 years old. In *Shelby County versus*
14 *Holder* the United States Supreme Court invalidated that coverage formula and now because
15 there's no coverage formula, Section 5 doesn't apply to anywhere. Congress could enact a new
16 coverage formula that's based on current conditions, but it has not done that. We will see though
17 that this anti-retrogression principle continues to apply in Florida through the Florida
18 Constitution.

19 Before we move into the Florida Constitution, we'll talk about two more concepts from
20 federal law, both of which arise from the United States Constitution. The first is the racial
21 gerrymandering, and this slide represents *Miller versus Johnson*, which is probably the leading
22 case on racial gerrymandering, although the court, the United States Supreme Court, has
23 considered a number of cases in this area. This is an interpretation of the Equal Protection Clause

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1 of the United States Constitution. The court has held that the Equal Protection Clause prohibits
2 the consideration of race in redistricting as the predominant factor. In other words, race cannot
3 be the predominant consideration in drawing district lines. It may be considered, and it may be a
4 motive to enacting a district in a particular way, but it may not be predominant. And the court
5 has explained that what that means is that traditional redistricting principles such as compactness
6 may not be subordinated or made secondary to the consideration of race in redistricting.

7 There is an exception to that that the court has recognized and that is, if necessary to
8 comply with the Voting Rights Act, the Legislature may consider race and utilize race as the
9 predominant consideration. The court has never explicitly decided this, but it has stated in a
10 number of cases that it assumes as much. It assumes that compliance with the Voting Rights Act
11 justifies the consideration of race as a predominant consideration in drawing to redistrict and
12 drawing districts. To the extent that it's necessary in order to comply with Section 2 or Section 5,
13 the Legislature may consider race even as the predominant factor. Otherwise race may be one of
14 the considerations in the mix, but cannot predominate over other traditional redistrict imprints.

15 The second concept, and it's a related one, is partisan gerrymandering. Partisan
16 gerrymandering is also an interpretation of the Equal Protection Clause, and as of 2019 in the
17 *Rucho versus Common Cause* decision, the United States Supreme Court has held that federal
18 courts will not get involved in deciding partisan gerrymandering claims. This is relevant,
19 however, to our state constitutional standards which we'll discuss momentarily. In the federal
20 court, federal courts have interpreted the United States Constitution not to prohibit at least not
21 some partisan gerrymandering. They have said that considering partisanship is permissible under
22 the federal constitution. The question was always whether it can go too far and how the courts
23 would go about determining how much partisan consideration is too much in drawing a

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1 redistricting map. In a number of decisions, the United States Supreme Court has deferred on
2 that decision. Finally in 2019 it decided that it had not identified a legal standard that it could
3 consistently and reliably apply to determine when a restricting plan goes too far in considering
4 partisanship in drawing districts, and therefore, the court decided that partisan gerrymandering is
5 not a claim that federal courts will consider.

6 We move now to the Florida Constitution. Article III, Section 16 sets out certain
7 parameters, but this is for state legislative districts rather than congressional. It is relevant in
8 some ways to congressional in the sense that this dictates the timeline by which state legislative
9 districts must be adopted. They must be adopted in the second year after each decennial census.
10 That would be in 2022 in the regular session. And although the congressional redistricting plan is
11 not bound by that same timeline, typically they have been developed and passed in tandem.

12 Here we see the state constitutional standards that were adopted in 2010. They are found
13 in Article III, Sections 20 and 21 of the Florida Constitution. One of those sections governs state
14 legislative redistricting and the other governs congressional redistricting, but otherwise the
15 standards are the same. They are separated into two tiers, Tier One and Tier Two. The Tier One
16 standards prevail in case of conflict; to the extent that Tier One standards conflict with Tier Two
17 standards, Tier One standards have precedence. Within each tier there is no order of priority, so
18 within the tiers, Tier One standards, for example, must be balanced with each other and likewise
19 within Tier Two, those standards must be balanced with each other. The fact that one is stated
20 before the other, the order in which they are stated, does not establish an order of priority. There
21 are conflicts. There is tension between these standards. For example, sometimes avoiding
22 diminishment and the ability of minority voters to represent their candidates of choice might
23 require drawing a non-compact district. So, in that case Tier One would prevail and the

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1 Legislature would be free to draw a non-compact district. Likewise, within Tier Two there could
2 be tension between the compactness standard and the requirement to utilize existing political and
3 geographical boundaries where feasible. For example, a city or a county might not be compact,
4 and so if the Legislature wants to preserve that city or county or follow its boundaries, then it
5 might not draw a district that could be as compact if it could ignore political and geographical
6 boundaries. Those standards must be reconciled and balanced in the drawing of the map.

7 Now we'll review some of the Florida Supreme Court's interpretation of these
8 provisions. The first that we'll discuss is the Tier One standard that prohibits the drawing of
9 districts with intent to favor or disfavor a political party. This was a significant addition to the
10 Florida Constitution in 2010 and the focus of this provision is intent. What matters here is
11 whether the Legislature is drawing districts with intent to favor or disfavor a political party. The
12 focus of this provision is not the effect of the map. There could be nonpartisan reasons why a
13 map might favor one political party or another. The question is what was the intent in drawing it.
14 If the intent was to favor a political party or to disfavor a political party, then that map violates
15 the standard. If that was not the intent, if that was simply an effect, if that was a political
16 consequence, then it doesn't violate the standard. Every redistricting plan will have political
17 effects. Every redistricting plan will have political ramifications, and that's why the Florida
18 Supreme Court made clear that the focus of this provision is intent as the language of the
19 provision states. The court also made clear that there is no acceptable level of improper intent. It
20 may not be considered – partisan considerations may not considered and weighed in combination
21 with other redistricting criteria. It simply must be excluded from the redistricting calculus
22 altogether.

23 The court made clear also that the Legislature is not required to balance the map between

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1 the two political parties. As this slide states, the Florida Constitution does not require the
2 affirmative creation of a fair plan, but rather a neutral one in which no improper intent was
3 involved. Again, intent is the focus of this standard. Political intent is set aside, then this standard
4 has been complied with.

5 Likewise with respect to incumbency, there may be no intent to favor or disfavor an
6 incumbent. That's why the Florida Supreme Court said here that the inquiry for intent to favor or
7 disfavor an incumbent focuses on various considerations. It would involve the shape of the
8 district. The court will look at the shape of the district in assessing whether there was an intent to
9 favor or disfavor an incumbent. It will look at incumbent addresses relative to those district lines
10 to determine whether a district appears to be intentionally taking in an incumbent's residence or
11 excluding an incumbent from the district. Those are things that the court will consider as
12 evidence in determining whether there was an improper intent. From the Legislature's
13 perspective in the process of passing that map, once again, this is essentially a negative standard.
14 It tells you what may not be done, what may not be considered, and the Legislature may not
15 consider and draw maps with an intent to favor or disfavor an incumbent.

16 Now we're moving into the provisions that are the analogs to the Voting Rights Act
17 provisions. The Tier One standards include the requirement that districts be drawn to provide
18 racial and language minorities with an equal opportunity to participate in the political process.
19 This is the Florida Constitution's equivalent to Section 2 of the Voting Rights Act, and it has
20 been interpreted in the same way. The *Gingles* standard that we discussed earlier with its three
21 preconditions and then ultimately the totality of the circumstances analysis would apply under
22 the Florida Constitution as well.

23 The second provision, this is the analog – under the Florida Constitution which relates to

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1 racial or language minorities is the diminishment standard. This is the equivalent of the Section 5
2 prohibition on retrogression. Section 5, as we discussed, no longer applies, but under the state
3 constitution, the Legislature cannot draw districts that diminish the ability of minority voters to
4 elect the candidates of their choice. Again, what this is focused on is the retrogression or
5 worsening of the position of racial or language minorities to elect the candidates of their choice.
6 The Florida Supreme Court stated in 2012 that the Legislature cannot eliminate majority-
7 minority districts or weaken other historically performing minority districts where doing so
8 would actually diminish a minority group's ability to elect its preferred candidates.

9 In assessing whether a district, a new district diminishes the ability to elect a preferred
10 candidate, we don't look simply to the voting-age population of the district, because it might not
11 tell the full story as to whether minority voters in that district would have the ability to elect a
12 candidate of their choice. We have to perform what the court has referred to as a functional
13 analysis. This requires a deeper dive into election data including past election results, registration
14 data, and turnout data within the districts that are under consideration. And that requires a
15 comparison of the benchmark district, the former district that was in place, and the new district to
16 see whether the new district affords minority voters with an undiminished ability to elect the
17 candidates of their choice. In this analysis, the courts will be looking at whether the new map
18 affords racial and language minorities at least the same number of districts in which they could
19 elect the candidates of their choice as the prior map did.

20 This slide sets forth the Tier Two standards. The first is the districts must be as nearly
21 equal in population as is practicable. This is the one person, one vote standard. In the context of
22 congressional maps, this has been construed quite strictly. The United States Supreme Court in
23 interpreting the federal constitution has said that this imposes a requirement of precise

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1 mathematical equality. So, state legislatures, when they redraw maps, typically will draw
2 congressional districts to have a deviation of essentially one person, so that the district that is the
3 largest district in terms of population will have one person more than the smallest district. In
4 limited circumstances, the United State Supreme Court has recognized some leeway, but not
5 much, and it requires a strong justification for every deviation for the one person, one vote
6 standard, so precise mathematical equality has, in practice, been a standard that state legislatures
7 have adhered to.

8 The second Tier Two requirement is that districts be compact, and this is basically a
9 commonsense measure. There's no bright line rule. But it begins with a visual analysis of the
10 district. Does it have a regular shape or is it bizarre or unusual in its shape? Does it have
11 appendages? The visual examination is the first standard, and that's something that most people
12 when they look at a map will easily see whether that's a district that looks reasonable or not. It's
13 obviously a compactness of a district. It's obviously affected by the geography of the state and
14 sometimes by the geography of Florida's counties, which are less compact in some counties than
15 other states. So Florida's counties are somewhat irregular and because of a third standard that
16 we'll talk about in a moment, which is adhering to political boundaries, that might influence the
17 compactness of some districts, as the geography of the state might. For example in the Keys.
18 You can't draw circular or rectangular district in the Keys. Florida as a state is not rectangular or
19 square and neither are its counties, so that will influence the compactness analysis. In addition to
20 visual compactness, we look at mathematical measures, and there are a couple of mathematical
21 measures of compactness that the Florida Supreme Court reviewed ten years ago. These are aids
22 to determining whether a district is compact, but visual compactness is the primary measure.

23 The third standard under Tier Two is the districts must, where feasible, utilize existing

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1 political and geographical boundaries. Political boundaries are city and county boundaries, so
2 typically the Legislature will try to keep as many cities whole and counties whole as possible,
3 and follow city and county boundaries. The other requirement, geographical boundaries, also
4 requires the Legislature, where feasible, to utilize easily ascertainable and commonly understood
5 geographical boundaries. And those could be rivers, or railways, or interstates, or state roads,
6 things that voters can identify with and recognize so that the boundary isn't simply running
7 somewhere that voters can't ascertain or identify.

8 These are all of the standards that the Legislature must balance and implement in
9 enacting any redistricting plan, and they all, in the context of geography and the demography of
10 the state, tend to come into some tension with each other. It's important to bear in mind, as the
11 Florida Supreme Court recognized in 2012, that the Legislature is not required to pass the best
12 possible map or draw the most compact districts. It's simply required to pass a map that meets
13 these constitutional thresholds, and there are a number of different configurations that could meet
14 these minimum requirements. The Legislature doesn't have to find that one perfect map. That
15 covers the standards that I wanted to review today. That's the overview of the standards and Mr.
16 Chairman I welcome any questions.

17 Rep. Sirois: Thank you very much Mr. Bardos for your informative presentation.
18 Members, there are two specific items that I'd like to address on the record before we take
19 questions from committee members. The first issue is incumbencies. I wanna state very clearly
20 that we are not, and we will not, be using any incumbent or candidate addresses to produce these
21 maps. The House took the same position last decade and the Florida Supreme Court viewed that
22 as a favorable step towards protecting against inadvertently favoring or disfavoring an
23 incumbent, one of our Tier One standards. Members, I'd also like to point out candidly as new

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1 districts lines are workshopped and this process proceeds, if there is a chance that any member
2 maybe paired with a fellow incumbent in a newly created district in order to create legally
3 compliant boundaries. I know that this may be an intimidating thought for members. However,
4 that is part of our process. As you bring comments to committee, please be mindful that I will not
5 entertain any discussion about placing boundary lines in order to favor or disfavor an incumbent
6 or potential challengers.

7 The second item that I'd like to address is a point that Mr. Bardos touched on regarding
8 the partisan makeup of the maps that will come before our committee. While external third-party
9 groups seemingly prioritize the Republican/Democratic split over the legal compliance of our
10 boundary lines, that is not what we as legislators are charged to do. Outside of using the
11 functional analysis to ensure our racial and language minority groups can elect a candidate of
12 their choice, a Tier One standard, I wanna be clear that staff nor this subcommittee will be
13 reviewing the overall partisan split of the map at any stage of this process to help ensure that we
14 are not intentionally favoring or disfavoring a political party or incumbent. Chair Leek was clear
15 yesterday in the full redistricting committee that they will also not be looking at a partisan split.
16 Additionally, I would encourage you not to engage in any planned or unplanned conversation
17 regarding such a topic as it may lend itself toward a violation of Tier One standards as
18 interpreted by the Florida Supreme Court.

19 Now I'll open up to questions of Mr. Bardos for committee members. I'd like to remind
20 you to please address your questions to the Chair. I will ask for one question to be submitted at a
21 time and then I'll recognize Mr. Bardos to provide an answer, and we'll deal with any follow up
22 questions as they may arise. Representative Benjamin, you are recognized for a question.

23 Rep. Benjamin: Thank you Mr. Chair. My question goes to intent. I noticed that it was

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1 some guidance in caselaw with regards to intent as it relates to the incumbent as to what the court
2 looks to determining what the intent was. I didn't see that in the – what you provided for intent to
3 favor or disfavor a political party. So is there anything that you've read or information that you
4 have as to what are some of the things that the court looks for to determine what the intent was?

5 Rep. Sirois: Mr. Bardos, you're recognized.

6 Mr. Bardos: Thank you Mr. Chairman. That's a very good question. So when assessing
7 the intent to favor or disfavor a political party, the court will review a number of considerations.
8 Obviously if there are statements on the record saying that we are favoring or disfavoring a
9 political party, that would be direct evidence and the most informative evidence, but the court
10 will also look at objective factors in the map to attempt to determine whether there was an intent
11 to favor or disfavor a political party. One of those is how closely is the Legislature following the
12 Tier Two standards, compactness and political boundaries and geographical boundaries. Those
13 standards, among other things, are designed to limit the ability to favor or disfavor a political
14 party or an incumbent, and so the courts will look at that and if the districts are compact, if they
15 faithfully follow political and geographical boundaries, then that weighs against a finding that
16 there was an improper intent. The courts will look at the shape of the district. It will look whether
17 the district population and the demography of the district relative to the shape of the district and
18 it will look at whether there have been interactions with outside actors who might have a vested
19 political interest in the process. That was something that was part of the redistricting litigation
20 after the last cycle. It will look at the demographics of a district and the overall political
21 composition of the map. So the overall political composition of the map, I think, by itself, the
22 court expressed, won't be enough because the court recognizes that there might be factors such
23 as drawing districts that protect the ability of minority voters to elect the candidates of their

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1 choice or concentrations of certain voters of one political party in, say, urban areas at high rates
2 that will affect the political composition of the map. So the court will look at everything in
3 totality to determine whether there was an improper intent, and so those are some of the
4 considerations that the court will look at.

5 Rep. Sirois: Thank you. Representative Beltran, you're recognized for a question.

6 Rep. Beltran: Thank you, Mr. Chairman, and thank you sir for your good presentation. I
7 guess I'm the only legislator from Hillsborough, so I'm gonna ask this question, cause my
8 county has been listed on page seven of the presentation. How on earth did Hillsborough County
9 get singled out? I've wondered this for a number of years cause I'm familiar with the VRA, but I
10 wasn't able to determine historically, how did we get singled out? And then if you can just
11 confirm for me that *Shelby County versus Holder* held that Hillsborough County is no longer
12 singled out. And I guess hopefully there's no counties in Florida that there's a finding, a
13 congressional finding, but if you could just assure me that we're in good standing now and tell
14 me how we got that there in the first place.

15 Rep. Sirois: You're recognized.

16 Mr. Bardos: Thank you Mr. Chairman. I assume by singled out you're referring to being
17 one of the five counties that was identified for coverage under Section 5 of the Voting Rights
18 Act. So in the 1970s Congress amended the Voting Rights Act and it added a provision to the
19 Voting Rights Act that said that any jurisdiction, any county in the United States that as of 1972
20 had a certain – had a test or device in place, and there's language in the Voting Rights Act that
21 defines that, and that had certain registration rates or turnout rates among minority voters that
22 were considered to be low, then those jurisdictions would be subject to Section 5 of the Voting
23 Rights Act. So it goes back to 1972 and it's based on data from 1972 and election practices from

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1 1972. That was never updated. That's why *Shelby County versus Holder* invalidated the
2 coverage formula and yes, you're correct. At this point because of *Shelby County versus Holder*,
3 neither Hillsborough County nor the other five counties that were originally covered nor any
4 other county in Florida is covered and therefore Section 5 doesn't uniquely apply to any of those
5 counties. The diminishment standard does, however, apply to all counties in Florida under the
6 state constitutional provision that we discussed.

7 Rep. Sirois: Thank you. Representative Massullo, you're recognized for a question.

8 Rep. Massullo: Thank you, Mr. Chair, and thank you for your presentation, sir. You
9 know, in an ideal world, we would have blended population where minorities don't exist.
10 Obviously we deal with them today. It's unfortunate that we have to, in certain ways. But how do
11 you define a minority population besides a consolidated area?

12 Rep. Sirois: You're recognized.

13 Mr. Bardos: Thank you Chairman. So there's not a definition, but typically the minority
14 populations that would typically be large enough to constitute a popula – a majority in a district
15 or a population that would have the ability to elect, whether or not they're a majority in a district,
16 would be African American voters and Hispanic voters. And we determine – use that data from
17 the census, decennial census that identified individuals by race and by ethnicity in the case of
18 Hispanic voters. And so we look at populations according to African American and Hispanic.

19 Rep. Sirois: One follow up, Representative Massullo.

20 Rep. Massullo: Thank you Mr. Chairman. In the last census, have you found that there's
21 been less indication of race on the actual questionnaire as there had been in the past?

22 Rep. Sirois: I'm gonna interject there. I don't know that our speaker would be in a
23 position to be able to provide an answer or any insight on that question.

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1 Rep. Massullo: Thank you.

2 Rep. Sirois: Thank you. Any other questions? Representative Beltran.

3 Rep. Beltran: Thank you, Chairman. Thank you for your previous answer, sir. I just got
4 one more question which is from page 12 of your presentation and this is the Tier Two standard.
5 It says districts shall, where feasible, utilize existing political and geographical boundaries. Does
6 that essentially create a presumption subject to the other Tier One and Tier Two standards that
7 you don't cross county lines unless you have to? Is that a fair statement of the law in your
8 opinion?

9 Rep. Sirois: You're recognized.

10 Mr. Bardos: Thank you Mr. Chairman. So it can be viewed as a requirement both to
11 preserve intact a county, but also to follow the county boundary with a district boundary. So it
12 can be viewed in different ways. During the last round of litigation, the courts would briefly look
13 at how many counties have been split and how many times a county has been split. Those are
14 considerations that go into that, but it can also be the use of an existing county boundary as the
15 district boundary, following the county line itself can be a justification for putting a district
16 boundary in a particular place.

17 Rep. Sirois: Thank you. Representative Fischer, you're recognized.

18 Rep. Fischer: Thank you, Mr. Chairman. This question really came up in part because of
19 your answer to Representative Massullo's question about minorities. My wife is originally from
20 Singapore and my kids are Asian. You mentioned that only two minority groups there are
21 considered and I think last night we saw the first Asian American Mayor elected in Boston and
22 Cincinnati. I know that we have a growing AAPI population in Florida. Why are only two
23 subgroups considered?

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1 Mr. Bardos: Other groups could be considered. I'm simply saying that as to –

2 Rep. Sirois: I'm gonna –

3 Mr. Bardos: I'm sorry.

4 Rep. Sirois: I think again that would be, that would require our presenter to offer
5 speculation on the way that the process is conducted in terms of the census and the data that is
6 collected. I don't think he's able to address that. But if you'd like to take a stab at it, you're more
7 than welcome.

8 Mr. Bardos: I was just commenting on the numbers in Florida. It's the populations that
9 are large enough, say at 300,000 people, to be even close to majority in a congressional district in
10 concentrations to draw a district will typically be African American and Hispanic populations.

11 Rep. Sirois: Follow-up?

12 Rep. Fischer: There's nothing in law or in court precedents that required it to just be two?
13 That's just – you're just stating that's kind of historically what's been considered and that others
14 can be?

15 Mr. Bardos: Thank you Mr. Chairman. That's correct. I was commenting on simply the
16 numbers in Florida and the concentrations of population in a geographical areas.

17 Rep. Sirois: Thank you very much. Representative Joseph, you're recognized for a
18 question.

19 Rep. Joseph: Thank you, Mr. Chair. I actually have three questions.

20 Rep. Sirois: Let's take 'em one at a time.

21 Rep. Joseph: Alright. Perfect. So just piggybacking off of questions that were raised
22 about other ethnic groups. When we're looking at minority population, you mentioned in your
23 presentation reference to language minorities, etc. Within Florida the two largest immigrant

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1 populations are Cuban and then Haitians. So Haitians are usually classified under the African
2 American whatever. How are they considered in this process as we're evaluating the
3 redistricting?

4 Rep. Sirois: You're recognized.

5 Mr. Bardos: Thank you Mr. Chairman. The Florida Supreme Court didn't say very much
6 about language minorities during the last process, so we don't have an interpretation of that. The
7 federal Voting Rights Act provides a definition of language minorities, but it's unclear whether
8 the Florida Constitution will follow that same definition. To the extent that there is overlap with
9 racial groups, as for example African American groups, that data is available and is being used
10 for drawing districts. So again, also the requirement – simply as a matter of numbers, you would
11 have to have a population that's sufficiently large to be able to control the result of an election.
12 So all of those are factors, but beyond that, the Florida Supreme Court hasn't elaborated on that
13 standard in the way that it has on some of the others.

14 Rep. Sirois: Recognized.

15 Rep. Joseph: Thank you, Mr. Chair. The next question is, you made reference to one of
16 the lessons learned from the prior litigation from our most recent census attempt. What other
17 topline points would you want to make sure that this committee is aware of with respect to
18 lessons learned from last time with redistricting, both litigation that we should avoid going
19 forward this time?

20 Rep. Sirois: I'm gonna interject there. I think that would ask for speculation on the part of
21 our speaker and I think that question is out of order.

22 Rep. Joseph: Well if I may, I'm not actually asking for speculation. I'm asking – so to the
23 extent that I would be – here's one way that you could look at it as speculation. So I'm not

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1 asking you to identify, let's say there was a list of five, to tell me which two you think, but
2 legally what are some lessons that we need to know with respect to what came out of the last
3 litigation for the purpose of this committee? I don't know if you still consider that speculation. I
4 don't think it is, but you let me know. To the extent that it wasn't already included in your
5 presentation

6 Mr. Sirois: I think if the speaker would like to – Mr. Bardos, if you'd like to cover the
7 mechanics of the decisions or opinions that the court offered, I think that would be fine, but I
8 would caution against any speculation.

9 Rep. Joseph: Yeah. I'm explicitly in my question not asking for speculation. I'm asking
10 for actual law that the committee should be aware of.

11 Mr. Bardos: Yeah, that's a very big question. We had about six years of litigation coming
12 out of the last cycle. So, I think the presentation has covered the high points and I think those are
13 the legal standards. There's a lot of nuance in redistricting for each one of those standards. So,
14 I'm not sure where I would start with that. I think the high points are covered in the presentation.

15 Rep. Joseph: Thank you.

16 Rep. Sirois: Your third question.

17 Rep. Joseph: The third question is, so our Chair sometimes makes reference to an eyeball
18 test, and I'm wondering if that is the equivalent to, I think what you called the visual test as
19 being the primary test for geographic compactness. Is that the same?

20 Rep. Sirois: You're recognized.

21 Mr. Bardos: Thank you. Yes, it's been called the eyeball test. It's been called the
22 interocular test for the visual examinations. You know it when you see it.

23 Rep. Joseph: That was all, thank you.

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1 Rep. Sirois: I'm gonna stick to the eyeball. I'm gonna stick with eyeball test. Did you
2 have any further questions Representative?

3 Rep. Joseph: Just one more. You don't need to answer it now, but to the extent that there
4 was anything that you think would be particularly pertinent in terms of lessons learned from the
5 prior litigation that was not covered in your presentation, and we don't need to do this for the
6 committee, but if there are any specific cases that you think we need to be aware of, I would love
7 to see those. That was it.

8 Rep. Sirois: Thank you. Representative Skidmore for a question.

9 Rep. Skidmore: Thank you, Mr. Chairman. The question is not for the presenter but for
10 you, if that – if now is the appropriate time.

11 Rep. Sirois: Certainly.

12 Rep. Skidmore: Certainly, thank you so much. So, we are speaking specifically on just
13 the legal issues of the redistricting process. So my question is at what point do we begin talking
14 about the policies that we will apply as a committee toward the map making process?

15 Rep. Sirois: Thank you very much for that question. I think that we have as a committee,
16 we have approached this project in several stages. As we have talked about repeatedly, it's
17 necessary for this committee to have the foundational knowledge for us to be able to move
18 forward, to understand the constitutional framework, to understand the applicable state and
19 federal law. Today's presentation is a continuation of that process, and I think moving forward,
20 now that we've been able to complete that, near completion of that educational process in order
21 to start turning our attention towards the task at hand. I cannot offer anything specific today
22 related to what our schedule looks like moving forward given special session, but as the
23 committee members are aware, the Constitution requires that we complete this process during

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1 our legislative session which begins on January 11th. So that is, I hope, a sufficient answer to
2 your question.

3 Members, thank you very much. I'm sorry, are there any other questions from committee
4 members? I want to thank you all for your questions and now we will open it up to public
5 comments. Do we have any public comment cards? Seeing no comment cards filed, once again I
6 want to thank you all for your time this afternoon. Mr. Bardos, I want to thank you for your
7 presentation and for being here today. Members, if you have any follow up questions for Mr.
8 Bardos, please feel free to submit those to committee staff and we'll work to get your questions
9 answered. As to our next meeting, we will keep the committee updated on our authorized dates
10 and times as we find out more details about special session and any impacts that it may have to
11 our schedule moving forward. Thank you, members. That concludes our committee meeting for
12 today. Vice Chair Tuck moves that we adjourn. Hearing no objection, we are adjourned.



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