

**House State Legislative Redistricting Subcommittee  
November 3, 2021**

Transcript of video recording available at:  
<https://thefloridachannel.org/videos/11-3-21-house-state-legislative-redistricting-subcommittee/>

EXHIBIT

**J67**

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1 Cord Byrd: The State Legislative Redistricting Subcommittee will come to order. DJ,  
2 please call the roll.

3 DJ Ellerkamp: Chair Byrd?

4 Cord Byrd: Here.

5 DJ Ellerkamp: Vice Chair Robinson?

6 Will Robinson: Here.

7 DJ Ellerkamp: Ranking Member Daley?

8 Dan Daley: Here.

9 DJ Ellerkamp: Representatives Arrington?

10 Kristen Arrington: Here.

11 DJ Ellerkamp: Barnaby has been excused. Bell?

12 Melony Bell: Here.

13 DJ Ellerkamp: Brannan?

14 Chuck Brannan: Here.

15 DJ Ellerkamp: Chambliss?

16 Kevin Chambliss: Here.

17 DJ Ellerkamp: Garrison?

18 Sam Garrison: Here.

19 DJ Ellerkamp: Hart?

20 Dianne Hart: Here.

21 DJ Ellerkamp: Hawkins?

22 Fred Hawkins: Here.

23 DJ Ellerkamp: Maney?

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1 Patt Maney: Here.

2 DJ Ellerkamp: McClain?

3 Stan McClain: Here.

4 DJ Ellerkamp: Melo?

5 Lauren Melo: Here.

6 DJ Ellerkamp: Mooney? Mooney?

7 Jim Mooney: Here.

8 DJ Ellerkamp: Persons-Mulicka?

9 Jenna Persons-Mulicka: Here.

10 DJ Ellerkamp: Salzman?

11 Michelle Salzman: Here.

12 DJ Ellerkamp: Snyder?

13 John Snyder: Here.

14 DJ Ellerkamp: Tant?

15 Allison Tant: Here.

16 DJ Ellerkamp: Valdes?

17 Susan Valdes: Present.

18 DJ Ellerkamp: Woodson?

19 Marie Paule Woodson: Here.

20 DJ Ellerkamp: Quorum's present Mr. Chair.

21 Cord Byrd: Thank you DJ and a few reminders before we begin, as I look out at an empty  
22 committee room, at least from the public's perspective. I would ask that everyone please silence  
23 all electronic devices, and if you wish to make a public comment, please fill out a form and turn

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1 it into the sergeant's staff. And if somebody walks in, we'll remind them of that. Also, for  
2 members and presenters, please ensure that you turn your microphone on when you are speaking  
3 and off when you are finished.

4 Good afternoon members. Welcome back to our interim committee meetings. So far in  
5 this process, we have covered an introduction to redistricting concepts, reviewed our website and  
6 current public input opportunities, discussed our map drawing application's advanced  
7 functionality and how those tools can assist us in aligning our maps with our constitutional  
8 standards, as well as demonstrated some tangible examples of our constitutional standards within  
9 our currently enacted House map. I explained during our first committee meeting how important  
10 a comprehensive educational effort is to understanding the full scope of redistricting. I hope  
11 you're coming to appreciate that this is not an easy task, nor one with clear cut answers. One of  
12 the last pieces of educational information we need to cover as a committee is the legal aspect of  
13 redistricting, which includes applicable federal and state law, as well as caselaw related to this  
14 process, especially Florida Supreme Court precedent that was established following the 2012  
15 redistricting cycle. This will directly impact how we view and apply our Tier One and Tier Two  
16 standards.

17 For this redistricting cycle, the House has retained outside counsel to advise the chamber  
18 on state and federal law, as well as relevant court precedent. For today's presentation, our  
19 committee will be hearing from Pete Dunbar with Dean Mead law firm. He began his public  
20 service in 1967, serving as a staff director in the Florida House, and later served as a  
21 representative from the Pinellas-Pasco County area. Pete's ten years as a state representative  
22 encompassed the 1982 redistricting cycle, and he has been additionally involved in subsequent  
23 redistricting cycles serving as outside counsel. Members, I want to differentiate that today's

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1 counsel presentation is for our education on relevant redistricting law. It is not for discussing  
2 hypothetical scenarios or specific policy decisions that may come before our committee because,  
3 as I've mentioned before, there is no single correct map. When we begin reviewing district  
4 boundary lines, decisions must be weighed among one another, with the goal of drawing a  
5 legally compliant map. As Mr. Dunbar goes through his presentation, I encourage you to take  
6 notes of questions you may have. Once the presentation is concluded, we will take questions  
7 from members on the contents of the presentation, and will then move on to public comment.  
8 And with that Mr. Dunbar, welcome to the House State Legislative Redistricting Subcommittee,  
9 you're recognized to present.

10 Pete Dunbar: Mr. Chairman, thank you very much. Members of the committee, my goal,  
11 as the Chairman stated today, is to provide an overview of the basic legal standards and their  
12 hierarchy that govern the task that you will be facing. I want to do it, first, by looking at the  
13 federal standards. You will find them, some to be previously used, and some to be very relevant  
14 still today. That is the standard that was used the first four times that legislative plans went to the  
15 Florida Supreme Court, and we'll take a look at those. Then, we'll look at the Florida  
16 redistricting standards that are now found in Sections 21 and 22 of Article III of the Constitution,  
17 and they were applied for the first time in 2012, as the Chairman indicated. These standards have  
18 – the new standards were considered and analyzed in significant detail by the Florida Supreme  
19 Court. The Chair referenced that particular decision. If you're interested, it's probably worth  
20 taking a look at. It's titled *In Re Senate Resolution of Legislative Apportionment*. It will be cited  
21 a number of times in the slide, rather lengthy, but very much full of guidance and insight for how  
22 things are expected to be conducted.

23 But, that being said, let's start first by taking a look at some of the federal-level legal and

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1 law and legal standards that have been around for a while, and I want to begin first with the  
2 Voting Rights Act that was enacted in 1965. Now, the goal here was to try and protect the  
3 mechanism or served as a mechanism for enforcing the 15th Amendment rights of – voting rights  
4 of minority members under the Constitution, and that was the objective. The Voting Rights Act  
5 had two relevant sections that carry over to state election activities that clearly also deal with  
6 apportionment activities. The first one is found in Section 2 of the Voting Rights Act, and it is  
7 this section that prohibits a state from imposing voting procedures or enactments that deny or  
8 abridge minority voting rights based on race, color, or language minority. There is a very  
9 significant seminal case on this that interpreted this Section 2 provision in that context, it's  
10 *Thornburg versus Gingles*. I will tell you that it's commonly referred to as the *Gingles* case, and  
11 that's the way I will refer to it from this point on. And under *Gingles*, basically what you find is a  
12 state is obligated to create minority opportunity districts when the minority population is large  
13 enough and is compact enough to justify such a district when the minority population needs to be  
14 deemed to be politically cohesive, so there can't be a polarization process within the minority  
15 population. And it also looks at whether or not the minority population grouping is being taken  
16 advantage of by a larger voting population that denies the minority population representation of  
17 their choice. In the context of the *Gingles* case, these elements present something to look at in  
18 the totality of the circumstances in order to make sure that Section 2 of the federal Voting Rights  
19 Act is complied with. I might point out here too, one of the other things from the case is that  
20 discriminatory intent is not required to be a violation of Section 2. It is the totality of the  
21 circumstances that I just enumerated that would create a basis for a challenge to such a district.

22       There's a second section that comes from the Voting Rights Act. Now, there's a little bit  
23 of history to this one, it is relevant for us for other reasons, but let me go through it nonetheless.

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1 It's Section 5, and its purpose was to prohibit retrogression of the positions that minority  
2 populations had obtained during the electoral process. Basically, Section 5 was enacted to  
3 prevent backsliding from the prior gains that had been attained by minority populations. In order  
4 to implement this tool, there was a provision in the law, or in Section 5, that required the  
5 preclearance of changes to election laws and election procedures by the federal government  
6 before the changes could be implemented in certain states and in geographical areas of certain  
7 other states. And those areas were determined through a formula based on existing conditions in  
8 the 1960's and the 1970's. Now, in Florida, the formulas extended the federal preclearance  
9 requirement to the specific jurisdictions that included Collier, Hardee, Hillsborough, and Monroe  
10 Counties. And in that context, when we had reapportionment plans that were running through the  
11 process, preclearance was one of the objectives that needed to be overcome going through it.

12 Now, I also want you to note the *Shelby County versus Holder* case that appears at the  
13 bottom of the page, and this case was decided by the United States Supreme Court in 2013. And  
14 basically it determined that the formulas for preclearance, based upon the events and activities  
15 and conditions in 1960 and in the 1970's, were no longer applicable, and eliminated the  
16 preclearance based on those conditions. Now, it did afford the opportunity for Congress to come  
17 in and put new formulas in place; Congress never did that. Long story short, Section 5 no longer  
18 requires preclearance by anyone anywhere. Also being said, that doesn't mean we walk away  
19 from or don't need to pay attention to some of the criteria that have been set by application of  
20 Article V.

21 Before we leave the federal area, let me talk briefly on a couple of items relating to  
22 gerrymandering. First, with regard to racial gerrymandering, the benchmark case, there are a  
23 number of them, but this is one of the key ones, is *Miller versus Johnson*, deals with racial

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1 gerrymandering and it basically provides, first, that you cannot, it is improper to have the intent  
2 to create a minority district as a predominant factor when you are designing that district, as a  
3 matter of general application. Race, however, may be considered and be taken into consideration  
4 as a predominant characteristic when you are competing to apply the standard to the compelling  
5 state interest that were first expressed in the federal Voting Rights Act and we now find in the  
6 new additions to Florida Constitution that took effect in 2012. This becomes a relevant part of  
7 your work when we look at the new Florida standards in a minute that you will find in the Tier  
8 Two standards in the Florida Constitution.

9 One more gerrymandering case that will be of interest and of note. Leda, is it *Rucho*?  
10 *Rucho versus Common Cause*, we were discussing the correct pronunciation a bit earlier. But this  
11 was the final determination that was done in 2019 with regard to political gerrymandering. Now,  
12 there was through a series of decades of cases that attempted to apply the 14th Amendment  
13 Equal Protection Clause to prohibit partisan gerrymandering. But all of the prior cases before the  
14 *Common Cause* case were left without a final determination. In this particular case, again, very  
15 recent, 2019, it basically took the federal Judiciary out of this question under the 14th  
16 Amendment by determining that political or partisan gerrymandering was beyond the reach of  
17 the federal courts, and it is a political and not a legal question. Again, when we take a look at the  
18 Florida standards in the next series of slides, this issue arises again, but it will appear in a  
19 different context than the claims that were made in the federal courts under the Equal Protection  
20 Clause or attempting to bring it under the 14th Amendment Equal Protection Clause.

21 So, let me first introduce you to the base standards that appeared in the 1968 version of  
22 Florida's Constitution. They are found in Article III, Section 16, and basically before 1968, there  
23 was no process for an aggrieved party to seek immediate or direct review of apportionment



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1 plans. That followed with a proliferation of litigation. Between the years 1955 and 1966, there  
2 were no fewer than seven apportionment plans offered by the Legislature, but ultimately all of  
3 them were rejected by the federal courts. As a result of this proliferation of fruitless and  
4 unproductive litigation, the provisions of Article III, Section 16 were adopted by the voters and  
5 now mandate, or did mandate, under that context, that the Legislature pair plans with a time  
6 certain prescribed shown here, that the optional standards include setting the numerical  
7 membership for each of the bodies here in the Legislature. By the way, that didn't previously  
8 exist as part of one of the standards in the 1885 Constitution. It did require that the districts be  
9 contiguous. So you can't just touch them with a point, there has to be a geographical continuity  
10 to that. And once adopted, to address this proliferation that was unproductive, prior to the  
11 adoption of the Constitution, were now provided an opportunity to go immediately to the Florida  
12 Supreme Court, where the goal is to provide a direct and immediate decision to the validity of  
13 the decisions that you have made here in the Capitol on this subject.

14 I will say that these were the standards that all of the apportionment plans that preceded  
15 2012 were evaluated against by the Florida Supreme Court, but in 2012 the voters added two  
16 new sections to the Constitution. That would be Sections 20 and 21. And their key components,  
17 the Chairman mentioned a little bit earlier, are the Tier One and Tier Two components that are  
18 shown here on the slide. In making an evaluation or consideration of these elements, if there is a  
19 conflict between the tiers, then Tier One standards are considered a priority over the Tier Two  
20 standards. For the standards within the tier, there is no priority, they are basically considered co-  
21 equal in their context. While I'm sure you are very much aware of these Tier One and Tier Two  
22 standards, let me just highlight them one more time before we go on to the next slide. In the Tier  
23 One standards, a plan may not favor or disfavor a political party or an incumbent member of the

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1 Legislature. District lines cannot be drawn to abridge the opportunity of racial and language  
2 minorities or diminish the ability for them to elect representatives of their choice. And districts  
3 must consist of contiguous territory. Tier One, the priority standards. In Tier Two, the standards  
4 require that the districts be nearly as equal as practicable, that districts be compact  
5 geographically and where feasible, the boundaries for the districts utilize or must utilize city,  
6 county, or geographical boundaries. And when I was observing your last meeting, Ms. Kelly  
7 provided specific examples for all of you on how those boundaries can be identified and utilized.  
8 It is not unusual to find a bit of tension between these tiers, that's part of what you will wrestle  
9 with, but in evaluating them, or dealing with the tension that might result, at least now you will, I  
10 hope, appreciate the priority on how you might evaluate that.

11 Now, this is my first time you'll see the citation of the actual case from 2012, you might  
12 make a note on it, if you'd like to read it. It is very fascinating and quite good. I'm going to try  
13 some of the key highlights from the case for your benefit. So, the first opportunity here would be  
14 to address the Tier One standards with regard to the improper intent to favor or disfavor political  
15 parties. First, with regard to the intent to favor or disfavor, there is no acceptable level of  
16 improper intent. If it's there, it's unacceptable. There is not any level for it to be obtained. But  
17 the court decision also notes that the provision speaks specifically to intent, and not to effect.  
18 Said differently, the standard does not require a fair plan. But it requires a plan without improper  
19 intent. The court, on this topic specifically, rejected the suggestion that there should be an  
20 alteration to a plan after it's drawn and the effects are known, and acknowledged attempts to  
21 rebalance the plan in this fashion based on statewide voting patterns was not a standard to be  
22 found in Tier One or to be found in Tier Two.

23 Next, let's take a look at the provision that provides that it is improper to favor or

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1 disfavor an incumbent when engaged in creating districts and the court also has provided us  
2 some standards on what that would bring that into play. First, districts cannot be configured with  
3 consideration towards the residences of any of you. The incumbent's residence is not a  
4 consideration that is permissible. Districts can't be created with the idea that we're not putting  
5 incumbents in the same district against each other. That's also an improper consideration. And  
6 finally, it's an improper consideration to create a district with the intent to preserve the core  
7 voting bloc of the incumbent's prior district.

8 With regard to the districts in the Tier Two standard, basically what we're doing here is –  
9 wait a minute, I think I got myself out of order. Give me just a quick second. Well, I want to do it  
10 this way. Let me do my best to deal with it by looking at the slides. One of the things that Tier  
11 One standard now deals with is basically what we found in the federal Voting Rights Act that I  
12 went through in some detail when we were looking at the federal standards. What may no longer  
13 be a preclearance requirement under Section 5, because that's been eliminated, now finds itself  
14 embodied in Florida's Constitution, in Article III, Section 21. Said differently, I made note of a  
15 series of counties that were affected under Section 5 of the Voting Rights Act, but under the new  
16 standards that we find in Tier One, it's no longer just those five counties, it is the entire state of  
17 Florida that the context of this minority opportunity or the ability to avoid prejudicial efforts in  
18 the creating of those districts. So, the Tier One standard that we now find is basically a  
19 reiteration of what was previously found in the Voting Rights Act that we previously discussed.

20 That gets us to the Tier Two constitutional standards, and there is a requirement that the  
21 district populations be as nearly equal as practicable. That's a carryover that we have seen in  
22 both congressional and legislative redistricting. But one of the things that is a bit unique, is there  
23 is a bit more flexibility in tolerance with regard to legislative district sizes and their variance that

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1 we'd find in the same context with a congressional district. So there is more flexibility allowing  
2 you to deal with some of the other standards, to deal with compactness and the boundary  
3 standards that are being created. Not that it's a lot, but it is there and it is slightly different.

4 The districts are again, required to be compact, and geography is the relevant factor here.  
5 Basically, it's a visual concept and there are recognizable, mathematical tests that Ms. Kelly has  
6 previously demonstrated to you and they include the Polsby-Popper, Reock, and the  
7 Area/Convex Hull tests, some of which were used in 2012 when the House presented its plan to  
8 the Supreme Court at that time.

9 Now, the political boundaries are pretty obvious. They are recognizable county and city  
10 boundary lines, geographical boundary lines, also are those things that are easily identified and  
11 recognizable, such things as major roadways, railways, rivers, and other natural water bodies. Let  
12 me conclude this way, the 2012 opinion that we focused on in some of these standards, and I  
13 hope you wrote down the citation if you would like to look at it in more detail, provide both  
14 guidance and analysis of the standards that govern and will govern the redistricting work you  
15 will be engaged in over the next few months.

16 And I want to leave with one final thought, reading from that opinion, before we take a  
17 little bit of time for questions, Mr. Chairman, if that's appropriate. So, if I might, from the  
18 Florida Supreme Court in 2012, a review of the House plan and the record reveals that the House  
19 engaged in consistent and reasoned approach, balancing the Tier Two standards by endeavoring  
20 to make districts compact, as nearly equal in population as possible, and utilizing political and  
21 geographical boundaries where feasible, by endeavoring to keep county and cities together where  
22 possible. In addition, the House approached the minority voting protection provisions by  
23 properly undertaking a functional analysis of the voting strength of a minority district. The

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1 House was successfully endorsed by the court in 2012, and by following the standards we've  
2 been through this afternoon, the same results will be delivered in 2022. Mr. Chairman, if there  
3 are questions, I'd be happy to answer them if I can.

4 Cord Byrd: Thank you, Mr. Dunbar, for your presentation. Members, there are two  
5 specific items that I would like to address on the record before we take questions from committee  
6 members. The first being incumbencies. I want to state very clearly that we are not and will not  
7 be using any incumbent or candidate addresses to produce these maps. The House took the same  
8 position last decade, and the Florida Supreme Court viewed that as a favorable step towards  
9 protecting against inadvertently favoring or disfavoring any incumbent, one of our Tier One  
10 standards. I think this is also a good point in time to very candidly say, as new district lines are  
11 workshopped, and this process proceeds, there is a chance any member may be paired with a  
12 fellow incumbent in a newly created district in order to create legally compliant boundary lines. I  
13 know that that may be an intimidating thought for all members, however that is part of the  
14 process. And as you bring comments to committee, please be mindful that I will not entertain any  
15 discussion about placing boundary lines in order to favor or disfavor a current House member or  
16 potential challengers.

17 Second item I'd like to address is a point Mr. Dunbar touched on regarding the partisan  
18 makeup of the maps that will come before our committee. While external third-party groups  
19 seemingly prioritize the Republican-Democrat split over the legal compliance of our boundary  
20 lines, that is not what we as legislators are charged to do. Outside of using functional analysis  
21 data to ensure our racial and language minority groups can elect a candidate of their choice, a  
22 Tier One standard, I want to be clear that staff nor this subcommittee will be reviewing the  
23 overall partisan split of a map at any stage in this process to help ensure we are not intentionally

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1 favoring or disfavoring a political party or incumbent. Yesterday, Chair Leek was clear that the  
2 full Redistricting Committee will also not be looking at the partisan split. Additionally, I would  
3 encourage you to not engage in any unplanned or planned conversations regarding such a topic  
4 as it may lend itself towards a violation of the Tier One standards as interpreted by the Florida  
5 Supreme Court. Now, I will open it up for questions from committee members. Please address  
6 your questions through the Chair. Members, are there any questions? All right, seeing no  
7 questions from the committee, we will now turn to public comment. Is there anyone from the  
8 public wishing to address the committee on today's presentation? Seeing none – oh,  
9 Representative Woodson, you have a question for Mr. Dunbar. You're recognized through the  
10 Chair.

11 Marie Paule Woodson: Thank you, Mr. Chair. And thank you very much for this  
12 comprehensive educational effort to get us acquainted with the process. My question has to do  
13 with, I have been asked a lot of questions in my district as well, and I would like to know, do we  
14 have a time frame as to when the Legislature will be going to the policy behind the maps that  
15 you will be receiving? Because I keep being asked that question in my district as well.

16 Cord Byrd: Sure, so I'll answer that since that is a policy question. Once the maps are  
17 presented in committee, and I would imagine that's coming sooner rather than later, but as soon  
18 as we know, the members will know. It will be at that time that we start workshopping the maps  
19 and then get into policy discussions.

20 Marie Paule Woodson: I will save the other questions for whenever you start the process.

21 Cord Byrd: Okay, great.

22 Marie Paule Woodson: Thank you Mr. Chair.

23 Cord Byrd: Yep, Representative Chambliss. Yes.

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1 Kevin Chambliss: Thank you, Mr. Chair. Again, thank you for this great presentation. I  
2 was just wondering, has there been an instance in where someone has – the intent of someone  
3 has been called into question? And if there has been an instance of that, how was it determined  
4 whether or not there was any intent there? A live example of that.

5 Cord Byrd: When you say an instance, Mr. Dunbar are you familiar with a legal case in  
6 which the courts have addressed intent or interest in the redistricting matter?

7 Pete Dunbar: Mr. Chairman, Representative Chambliss, I would – two thoughts on that.  
8 One, that's part of what we were discussing, or the United States Supreme Court was discussing  
9 in the *Thornburg* case, which we now, in a somewhat different context, pick up and find in the  
10 provisions of Article III, Section 21. If you will take a look at the opinion that was appearing,  
11 you will find that the court went through a number of districts on a number of bases. And the  
12 citations that I was prioritizing on how that was evaluated is a direct result of how those districts  
13 were challenged. Now, that dealt with both Tier One and Tier Two, but certainly included the  
14 issues of Tier One that you're looking at too. So, I guess that's a long answer, but the real short  
15 answer is, yes, and that's what you find, that the Supreme Court of Florida examined in 2012, in  
16 my opinion.

17 Cord Byrd: Follow up? No. Okay, Ranking Member Daley, you're recognized.

18 Dan Daley: Thank you, Mr. Chair. And Mr. Dunbar, thank you very much for the  
19 presentation. My question, I don't believe is for you. But it's actually stepping back to the  
20 answer to Rep. Woodson's question. Mr. Chairman, so if we are to workshop maps before we  
21 have ultimately decided what policy positions we're going to take, whether it's to, whether when  
22 it comes to prison population or other factors that we've raised, and others have raised. How are  
23 we looking at maps before we've decided how we're going to handle those policy issues, I guess

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1 is the question. Because my concern is, are we putting the cart before the horse, which I  
2 recognize is a strange analogy coming from me.

3 Cord Byrd: So thank you for the question. So at the end of the day, the constitutional  
4 requirements are the policy decisions that we will apply to making legally compliant maps.  
5 Follow up?

6 Dan Daley: Thank you, Mr. Chair. So, and I certainly recognize that in the Constitution is  
7 the binding document. But, when it comes to what we are permitted to change policy-wise, given  
8 that we are the Legislature, when it is not in the actual Constitution, but it is statutory or it's a  
9 policy decision for us to make, that's our decision to make, right? So, there are certain things that  
10 are not unconstitutional that we could be doing and could be considering as we're moving  
11 forward in doing this process. Is that correct?

12 Cord Byrd: I mean, members are always free to file legislation and have them go through  
13 the committee process as they, you know, if they think that the law needs to be changed. The  
14 task of this committee is to apply the Constitution and the laws that currently exist in preparing  
15 these maps. Follow up?

16 Dan Daley: Yes, Mr. Chair. And so, and I appreciate that. I guess my thing is going back  
17 to it, it's not constitutionally or legally prohibited, and I'll use the prison population example  
18 again, for us to consider that when making the maps. So at what point are we as a body are going  
19 to decide on those types of issues prior to us seeing a map, or after, or ever for that matter?

20 Cord Byrd: And I appreciate the question, and this has been brought up in the big  
21 committee, and also in this committee, and I'm certain in the congressional committee several  
22 times, regarding the use of the census data as it relates to prisons. But I want to make it clear that  
23 the U.S. Census data does not just apply to prisons, it applies, it counts for other group quarters.



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1 And so under Article X, Section 8 of our Constitution, it says each decennial census of the state  
2 taken by the United States shall be an official census of the state. And then throughout Florida  
3 statutes, it repeats that the U.S. decennial census data is the official census of the state for the  
4 purposes of congressional redistricting. That is the standard, both constitutionally and statutorily  
5 that we are going to apply to, for example, prison populations. Follow up? Yep.

6 Dan Daley: Sorry for the back-and-forth, Mr. Chair. So what I didn't hear in that is that  
7 we can't take up the issue of prison gerrymandering as a consideration as, I believe, eleven other  
8 states have done as they've gone through the redistricting process. So there's nothing legally  
9 prohibiting us from considering that and other factors. Is that my understanding?

10 Cord Byrd: So I would just correct the premise of the question that there's prison  
11 gerrymandering. We're not prison gerrymandering, we are following the state constitution and  
12 state law as it applies to prison populations. And, you know, I think that's an issue you may want  
13 to take up with the U.S. Census Bureau is how they place those individuals in certain, or where  
14 they're accounted in the census. We're following state law just as we did in the 2012 census, or  
15 2012 redistricting. Follow up?

16 Dan Daley: Thanks Mr. Chair, just a last point here. And it is my understanding that the  
17 Census Bureau actually provides the data that would enable us to, for example, pair up Florida  
18 state inmates, as they may be, to their last known addresses or anything like that. So the data  
19 actually does exist, other states have been able to do it, even with the National Census Bureau's  
20 information.

21 Cord Byrd: I appreciate the discussion. I think it's an important one. The other states may  
22 use the data that way, our state has chosen through our constitution law to not use the data that  
23 way, and to break it out into – we don't use geocoding. And in fact, some states do use

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1 geocoding for their prison populations, and that may end up, that may result in us violating state  
2 law and knowing where a certain person is and where they're going to vote. Follow up? Okay.  
3 Anyone else from the committee? Yep, Representative Tant, you're recognized.

4 Allison Tant: Thank you, Mr. Chair. I just have a question about, in regards to the  
5 districts being as nearly equal in population as possible or practicable. What will our population  
6 deviation for districts be? And will it be uniform across all districts? Do we – have we made a  
7 decision on that?

8 Cord Byrd: So I think there's a – I'll let Staff Director Kelly address that, because there  
9 may be a policy component to that, so I'll let her answer it.

10 Leda Kelly: Thank you, Mr. Chair, and there is a legal component to it as well, Mr.  
11 Dunbar, if you'd like to fill in. Last decade the House had plus or minus, roughly plus or minus  
12 2% in the population deviation. However, you know, obviously on our maps, our state has grown  
13 by over two and a half million people throughout this decade. So as we go and create the  
14 districts, we will have to see where that line lies. There's nothing in, whether it's state law or  
15 federal precedent, that says it has to be at a certain percentage. But as we evaluate, you know, if  
16 a county is kept whole here, or perhaps a city is split here, it may affect where those population  
17 limits fall. So as of right now, there's no set-in-stone number. And Mr. Dunbar, if you'd like to  
18 speak to the legal side of that. Mr. Chair.

19 Pete Dunbar: Yes, Representative Tant, I think I mentioned in my presentation, that there  
20 is a degree of more flexibility in variance and population groupings for legislative seats than  
21 congressional seats. And if you go all the way back to *Baker versus Carr*, when one person, one  
22 vote was established, that was the standard set. There have been a number of cases in the next  
23 five decades where people have challenged too big, too small. Candidly, in my opinion, Florida

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1 has always been much closer in the variance than most other states, but we have seen in other  
2 states the variance go, I believe, as high as 10% between high and low. The other thing I  
3 mentioned in my presentation, and this will be a challenge for you, based on the legal standards I  
4 presented, is that you will find that there will be some tension among the standards in the  
5 different tiers. So, you're asked to be compact, you're asked to follow city, county boundary  
6 lines, and you are asked to be as equal in population as practicable, and there are the kinds of  
7 issues that you will wrestle with there, based on the standards provided by the Supreme Court  
8 that will end up with a variance that you then have to evaluate, is it too much and not as equal as  
9 practicable. But at the same time, I protected the county boundary lines, those kinds of things.  
10 So, but, there is a bit more flexibility for the legislative districting.

11 Cord Byrd: Follow up?

12 Allison Tant: Yes, will it be a uniform percent deviation for all districts? Or is it going to  
13 vary from district to district?

14 Cord Byrd: I'll have the staff director take that.

15 Leda Kelly: Thank you, Chair. Thank you, Representative. It's usually identified as a  
16 range, and there's two items as well. An individual district can have a range deviation, some may  
17 be slightly over what the ideal population that referenced, you know, a couple of meetings ago.  
18 Or perhaps it's slightly below. So it may be district-by-district, and then the overall map, so the  
19 entire state, will also have a population deviation.

20 Cord Byrd: Any other questions from the committee? Anyone else? Alright, seeing none.  
21 We don't have any public comment cards, but I do see a few members of the public, including  
22 Representative Rizo, welcome. Anybody from the public wishing to comment on the  
23 presentation? Alright, seeing none. Members, with counsel's presentation, if you have any

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1 follow-up questions, please direct them through committee staff, we'll work to get your  
2 questions answered. As to our next meeting, we'll keep the committee as our next authorized  
3 date, as we find out more details about any special session and any impacts it may have on the  
4 upcoming schedule. I'd like to, once again, thank Mr. Dunbar for his presentation, and for his  
5 service to our state. Thank you, members, this concludes our committee agenda for today. And  
6 Representative Valdes moves we rise. Thank you. Meeting is adjourned.



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