The Process and Politics of Legislative Reapportionment and Redistricting Under the Florida Constitution

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Reapportionment\(^1\) and redistricting\(^2\) of the State Legislature are initially and predominantly functions of the State Legislature.\(^3\) These tasks are accomplished by article III, section 16 of the Florida Constitution which requires the participation of each of the three branches of government.\(^4\) On
three separate occasions during 1972, 1982, and 1992, this section served as the procedural framework for redistricting the Florida Senate and House of Representatives. However, as the contentious 1992 redistricting effort graphically demonstrates, this constitutional provision does not eliminate the partisan politics that permeate the process.

As a result of the politically divisive 1992 legislative struggle over the redistricting of the State Legislature, efforts were undertaken during the 1993 legislative session to alter or eliminate this constitutional procedure which maximizes government involvement by requiring participation by all three branches of state government. Proposals were made to either replace the present system with an appointed commission, or involve such a commission with legislative efforts. Although these proposals did not pass, the seeds of change appear to have been planted by the discord of 1992.

To understand how the state has gotten to this point after only three redistricting experiences, it is necessary to examine the genesis of this constitutional provision, study its procedural and substantive requirements with particular emphasis on federal law considerations, trace its operation
during 1972 and 1982, explore the contentious 1992 redistricting battle, and then look at proposed changes to see if they might improve upon the existing provision.

II. HISTORICAL OVERVIEW OF REDISTRICTING IN FLORIDA

A. The Former Provisions

Florida Constitution, article III, section 16 is a product of the 1965 Florida Constitution Revision Commission's efforts which ultimately led to the present Florida Constitution, adopted by the voters in 1968. The Commission's work on the legislative redistricting provision, however, had its roots in the United States Supreme Court decision of *Baker v. Carr.* In *Baker,* the Court tossed the lower courts into a "political thicket" by holding that legislative redistricting presented a justiciable issue. Ensuing litigation challenged Florida's legislative districts as being malapportioned.

The history of redistricting litigation in Florida is a study of the rapid migration into, and urbanization of, a state that had been traditionally controlled politically by rural interests. The explosive urban growth that began in the 1950's came at a time when minorities, particularly Blacks, were seeking, and to some degree realizing, a greater voice in the political processes. This stronger minority voice can be seen in the United States Supreme Court desegregation decisions of the mid-1950's and the passage of both the Civil Rights Act and Voting Rights Act in the mid-1960's.

5. 369 U.S. 186 (1962).
7. See *Baker,* 369 U.S. at 209.

"Malapportionment" is the inequitable distribution of legislative seats created either by the failure to reapportion at regular intervals based on population formula, or by the use of a population formula that discriminates against a group or geographical area of the state. Both practices are illegal under *Baker* and its progeny.

Each Florida redistricting case represents a microcosm of the population shift from rural to urban domination and the attendant emergence of minorities toward becoming a potent political focus, all reflected in the battle for legislative power.

Prior to the adoption of the 1968 Constitution, the provision controlling legislative redistricting was article VII, section 3 of the 1885 Constitution which required legislative districts to be as nearly equal in population as practicable, but no county shall be divided in making such apportionment, and each District shall have one Senator; and, at the same time, the Legislature shall also apportion the Representation in the House of Representatives, and shall allow three (3) Representatives to each of the five most populous counties, and two (2) Representatives to each of the next eighteen more populous counties, and one Representative to each of the remaining counties of the State at the time of such apportionment.\(^{12}\)

Thus, as demonstrated in *Sobel v. Adams*, a relatively small number of voters could elect a majority of the Legislature:

Each of the three representatives in the Florida House of Representatives from Dade County, the most populous county in the State, represents the equivalent of 311,000 people according to the 1960 Federal census. The member from Gilchrist, the least populous county, would represent 2,868 residents. The five most populous counties

\(^{12}\) FLA. CONST. of 1885, art. VII, § 3. The 1885 constitutional provision called for 38 Senate districts. *Id.* Prior to 1885, redistricting was governed by article IX of the Florida Constitutions of 1838, 1861, 1865 and article XIII of the Florida Constitution of 1868.

The 1838, 1861, and 1865 Constitutions provided for one representative for each county, with increases in the number of representatives based on a uniform population ratio, which would remain in place until a new census was taken. FLA. CONST. of 1838, art. IX, § 1; FLA. CONST. of 1861, art. IX, § 1; FLA. CONST. of 1865, art. IX, § 1. The Senate was not to be less than one-fourth nor more than one-half the number of representatives. FLA. CONST. of 1838, art. IX, § 2; FLA. CONST. of 1861, art. IX, § 2; FLA. CONST. of 1865, art. IX, § 2.

The 1868 Constitution gave each county one representative, plus an additional representative for each 1000 registered voters, up to a maximum of four for any county. FLA. CONST. of 1868, art. XIII, § 1. The Senate remained essentially unchanged. See 25A FLA. STAT. ANN. 672 (West 1991) (annot. to FLA. CONST. art XII, § 10). The 1885 Constitution, as amended in 1950, provided that the official federal census would be the official Florida census upon which the Legislature would rely. FLA. CONST. of 1885, art. VII, § 5 (1950). Prior to this amendment, the 1885 Constitution required the Legislature to enumerate by county all of the state's inhabitants. *Id.*
average one representative for each 106,000 people. The five least populous counties average one representative for each 3,266 people. The membership of the Florida Senate, considered on a basis of representation of numbers, would show a similar disparity between the more populous and the less populous areas.\textsuperscript{13}

The three-judge court\textsuperscript{14} in Sobel, considering a constitutional challenge based on urban-rural population inequality as opposed to pure race-based variance, found the 1962 redistricting plan before it invidiously discriminatory and contrary to the Equal Protection Clause of the Fourteenth Amendment, but gave the Legislature the opportunity to remedy the violation.\textsuperscript{15} The federal court, upon reviewing the Legislature's new plan, proceeded to validate it.\textsuperscript{16} On review, the United States Supreme Court reversed and remanded the case for consideration of the Fourteenth Amendment's requirements of the use of population as a basis for redistricting and permitting deviations only if supported by legitimate considerations implicating rational state policies as set out in Reynolds v. Sims.\textsuperscript{17}

On remand, the federal district court deferred action until after the 1965 legislative session, during which the Legislature adopted another redistricting plan.\textsuperscript{18} The district court held that the new plan did not meet constitutional requirements; however, the plan would be implemented on an interim basis expiring sixty days after adjournment of the 1967 legislative session.\textsuperscript{19} The United States Supreme Court, finding no basis for allowing interim implementation of an unconstitutional malapportioned plan, reversed the district court and remanded the cause for the purpose of effectuating a valid plan for the 1966 elections.\textsuperscript{20}

In March, 1966, the Legislature adopted yet another plan which provided for multi-member districts with population deviations in the Senate in excess of twenty-six percent and in the House in excess of thirty-four percent.\textsuperscript{21} The United States Supreme Court once again invalidated the

\begin{flushleft}
\footnotesize{\textsuperscript{13} Sobel, 208 F. Supp. at 317.}
\footnotesize{\textsuperscript{14} Litigation challenging any statewide legislative redistricting is heard by a three-judge federal district court. 28 U.S.C. § 2284 (1988).}
\footnotesize{\textsuperscript{15} Sobel, 208 F. Supp. at 318-19.}
\footnotesize{\textsuperscript{16} Sobel, 214 F. Supp. at 812.}
\footnotesize{\textsuperscript{17} See Swann, 378 U.S. at 553; Reynolds v. Sims, 377 U.S. 533 (1964).}
\footnotesize{\textsuperscript{18} Sobel, 258 F. Supp. at 820.}
\footnotesize{\textsuperscript{19} Id. at 822.}
\footnotesize{\textsuperscript{20} Swann, 383 U.S. at 211-12.}
\footnotesize{\textsuperscript{21} See Sobel, 258 F. Supp. at 826. As demonstrated herein, Florida Constitution article III, section 16 requires redistricting in conformity with the Federal Constitution. Population}
\end{flushleft}
plan because the state had not justified these deviations on rational state policy grounds. On remand, the district court, finding Florida's plan constitutionally infirm, took it upon itself to redistrict the State into forty-eight Senate districts and 119 House districts. The 1968 Constitution Revision Commission wanted to avoid further litigation by providing a mechanism for ultimate judicial review by the Florida Supreme Court. During its deliberations, the Commission's main focus was on the importance of the one person, one vote principle, as well as the contiguity and relative size of districts.

B. The Current Provision

1. Overview of Substantive Considerations

Florida Constitution, article III, section 16 was born of this five-year litigation chronology and requires the Legislature, by joint resolution not subject to gubernatorial veto, to reapportion the state into not less than thirty nor more than forty senatorial districts, and into not less than eighty nor more than 120 representative districts, in accordance with both the state and Federal Constitutions. This must be accomplished during the regular session of the Legislature convened "in the second year following each decennial census." The provision further requires that both Houses consist of "consecutively numbered . . . districts of either contiguous, overlapping or identical territory." "Contiguous" means sharing a deviation is a factor in the one person, one vote mandate. Population deviation is the difference between a district's actual population, and the "ideal" population determined by dividing the total state population by the number of districts. For example, if a state has a population of 10,000,000 and a 100-seat legislative body, the ideal population district is 10,000,000 divided by 100 or 100,000.

23. Swann, 263 F. Supp. at 226. The court further held that the term of office for those elected under this plan would expire with the 1968 general elections. Id. at 228.
25. Id.
26. FLA. CONST. art. III, § 16(a).
27. Id. The decennial census is conducted in every year ending in zero. See 13 U.S.C. § 141 (1988). The Florida Constitution provides that "[e]ach decennial census of the state taken by the United States shall be an official census of the state" and "become(s) effective on the thirtieth day after the final adjournment of the regular session of the legislature convened next after certification of the census." FLA. CONST. art. X, § 8.
28. FLA. CONST. art. III, § 16(a).
common boundary for a reasonably significant distance; “overlapping” means sharing some of the territory of two districts; “identical” means two districts following the same lines. 29

The state constitutional requirement that redistricting be accomplished in accordance with the Federal Constitution necessitates inquiry of the one person, one vote principle. Specifically, population deviation, the profound implications of the Federal Voting Rights Act of 1965, as amended, political gerrymandering and other federally recognized factors have to be considered in the process.

The United States Constitution, Article I, Section 2 governs apportionment of the United States House of Representatives and requires that redistricting of that body be approached with the objective of achieving zero deviation from population equality. 30 The ideal district population is determined by dividing the state’s total population by the number of seats assigned to the state. 31 A state’s total deviation is determined by adding the percentage above the ideal population of the largest district and the percentage below the ideal population of the smallest district. The United States Supreme Court, in Kirkpatrick v. Preisler, 32 held that there is no point at which population deviations become de minimis or insignificant for congressional reapportionment; states are required to make a good faith effort to achieve mathematical equality. 33 Any deviation from precise mathematical equality with regard to congressional redistricting is examined with a jaundiced eye. Only where population variances are unavoidable despite a good faith effort to achieve zero deviation, or where there is a compelling justification for the deviation, will the court accept such variances. 34

While the Federal Constitution, Article I, Section 2 controls congressional reapportionment and redistricting, the Equal Protection Clause of the Fourteenth Amendment applies to state legislative realignment. In Reynolds

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29. See In re Apportionment Law Appearing as Senate Joint Resolution 1 E, 1982 Special Apportionment Session, 414 So. 2d 1040, 1050 (Fla. 1982). These considerations are addressed further in part III of this article.


31. See Kirkpatrick, 394 U.S. at 528. Congressional districts are all single-member. 2 U.S.C. § 2(a) (1988). By the 1990 census, Florida was accorded 23 congressional districts.

32. 394 U.S. at 526.

33. Id. at 530-31.

34. White v. Weiser, 412 U.S. 783, 790 (1973). Population variance is determined by taking the difference between a district’s actual population and ideal population, and dividing that number by the ideal population. This results in the percentage proportion by which a district’s population exceeds or is below the ideal population.
the Court recognized that the Equal Protection Clause provides for more flexibility with respect to state legislative apportionment. However, states are still required to make an honest and good faith effort to draw districts as near to equal population as is practical. The Reynolds Court recognized that mathematical exactness or precision is not necessarily a workable constitutional requirement in the state legislative process, and that some deviations are constitutionally permissible so long as the variances from a strict population standard are based on legitimate state policy consideration. The Court cautioned, however, that even where there may be rational state policy considerations for population deviations among the several legislative districts, population is still the controlling consideration, and population equality the ultimate goal.

The Reynolds Court declined to spell out any precise constitutional test for population variance propriety, deciding instead to consider each case on its particular factual basis. However, the Court, in Mahan v. Howell, suggested the outer limits of allowable population variation among legislative districts when it held that a 16.4% variation did not exceed the limits under which equal protection would be satisfied. However, the Court cautioned that its view was limited to the particular and complex facts of that case. In Connor v. Finch and Chapman v. Meier, the Court held that variations of sixteen to twenty percent were constitutionally unacceptable.

In White v. Register and Gaffney v. Cummings, the Court held that population deviations of less than ten percent were ipso facto acceptable as de minimis in the face of a challenge of invidious discrimination under the Equal Protection Clause of the Fourteenth Amendment.

Through the 1982 redistricting process, minorities claiming that their respective voting power was negated or diluted as a result of skewed

36. Id. at 578.
37. Id. at 577.
38. Id.
39. Id. at 567.
41. Id.
43. 420 U.S. 1 (1975).
44. Connor, 431 U.S. at 417; Chapman, 420 U.S. at 24.
47. Id.; White, 412 U.S. at 764.
boundary lines had to rely on the Voting Rights Act of 1965 and the Fourteenth and Fifteenth Amendments to the United States Constitution, all of which required a showing of purposeful discriminatory intent. This intent requirement spurred Congress to amend the Voting Rights Act by eliminating a showing of intent and imposing a results standard which allows affected minorities to prove a violation of federal law by establishing that they did not have an equal opportunity to “participate in the political process and to elect representatives of their choice” as a result of a voting practice or procedure, including a legislative redistricting plan. The 1982 amendments to the Voting Rights Act were first considered by the United States Supreme Court in *Thornburg v. Gingles* which involved a challenge to legislative redistricting plans in North Carolina calling for one multi-member senate district, one single-member senate district, and five multi-member house districts. The Court held that challengers to a redistricting plan must prove the following three threshold conditions: (1) that the minority group “is sufficiently large and geographically compact to constitute a majority in a single-member district;” (2) that it is “politically cohesive;” and (3) that, in the absence of special circumstances, such as incumbency, bloc voting by the white majority usually defeats the minority’s preferred candidate.

Once these three conditions are established, certain objective factors must be considered by the court in determining whether, from the “totality of the circumstances,” a violation has occurred. These totality factors

50. 42 U.S.C. § 1973(b) (1988). This is commonly referred to as Section 2 of the Voting Rights Act of 1965 as amended. Section 2 provides:
A violation of [Section 2] is established if, based on the totality of the circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by [Section 2] in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

52. Id. at 50-51.
53. See id. at 43.
54. Id. at 46.
include the following: (1) the extent of the history of official discrimination touching on the class participation in the democratic process; (2) racially polarized voting; (3) the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single-shot provisions, or other voting practices that enhance the opportunity for discrimination; (4) denial of access to the candidate slating process for members of the class; (5) the extent to which the members of the minority group bear the effects of discrimination in areas such as education, employment, and health which hinder effective participation; (6) whether political campaigns have been characterized by racial appeal; (7) the extent to which members of the protected class have been elected; (8) whether there is a significant lack of responsiveness by elected officials to the particularized needs of the minority group; and (9) whether the policy underlying the use of the voting qualification, standard, practice or procedure is tenuous.

This list is not exhaustive; other factors may be relevant, and it is not necessary that all, or any number of factors, be proved. Litigation under Section 2 is highly fact-intensive, and must be decided on a case-by-case basis. Therefore, for challengers to prevail on a vote dilution claim under Section 2 of the Voting Rights Act, they must ultimately show that under the totality of the circumstances, the legislative redistricting scheme "has the effect of diminishing or abridging the voting strength of the protected [minority] class." In addition to the availability of Section 2 of the Voting Rights Act of 1965, as amended, to allow minorities such as Blacks and Hispanics to challenge redistricting plans that dilute the relative strength of minority

55. Under single-shot voting, a voter may cast as many votes as there are candidates in a pool, or the voters may choose to vote for a lesser number of candidates. This tends to allow factions to target, or single-shot, particular candidates.

56. Id. at 44-45.

57. Thornburg, 478 U.S. at 45.

58. See id. at 46.

59. Voinovich v. Quilter, 113 S. Ct. 1149, 1157 (1993). As the cases noted below demonstrate, implicit concerns in the vote dilution analysis include packing and fracturing of a cohesive minority group. "Packing" is the concentration of a minority group into one or more districts so that the group constitutes an overwhelming majority in those districts, thereby negating the relative voting strength of a percentage of the total minority vote. Rybicki v. State Bd. of Elections, 574 F. Supp. 1082, 1093 (N.D. Ill. 1982). "Fracturing" is the breaking off of small percentages of a bloc of minority voters for inclusion in a large majority district, thereby submerging the minority vote in the majority district. Gingles v. Edmisten, 590 F. Supp. 345, 349 (E.D.N.C. 1984), aff'd sub nom. Thornburg, 478 U.S. at 30.
voters, there is another provision of the Voting Rights Act which has vitalized the federal government's role in monitoring state governments' regulation of the election process, including the redistricting process: Section 5 of the Voting Rights Act.\footnote{60}{42 U.S.C. § 1973c (1988).}

Section 2 applies to all jurisdictions by prohibiting states or political subdivisions from imposing any voting practice or procedure that dilutes the voting strength of racial and ethnic minorities, regardless of intent to discriminate. Section 5, however, applies only to specified jurisdictions, requiring them to be precleared by either the Department of Justice (DOJ) or the United States District Court for the District of Columbia, by showing that any election practice or procedure affecting them does not have the purpose or effect of denying or abridging the right to vote of a racial or ethnic minority group.\footnote{61}{Since redistricting is a voting procedure which must be precleared as to covered jurisdictions, Allen v. State Bd. of Elections, 393 U.S. 544 (1969), the redistricting plans for state legislative seats are required to pass the preclearance procedure before they can become effective in those covered jurisdictions. Five Florida counties—Collier, Hardee, Hendry, Hillsborough and Monroe—were included in 1975 amendments to the Act as covered jurisdictions because of their use of English-only election materials that discriminated against voters with a dominant language other than English. A redistricting plan must be precleared as to these five counties only. Other changes include, but are not limited to: (1) any change in qualifications or eligibility for voting; (2) changes concerning registration; (3) changes involving the use of a language other than English in any aspect of the electoral process; (4) changes in the boundaries of voting precincts or in the location of polling places; (5) changes in the boundaries of a voting unit (through redistricting, annexation, incorporation, reapportionment, changing to at-large elections from district elections or vice-versa); (6) changes in the method of determining the outcome of an election; (7) changes affecting the eligibility of persons to become or remain a candidate; and (8) changes in the eligibility and qualification for independent candidates. See 28 C.F.R. § 51.13 (1992).}

In addition to voting strength equality and minority vote dilution considerations, the Federal Constitution also makes political gerrymandering a justiciable issue.\footnote{62}{See Davis v. Bandemer, 478 U.S. 109, 119 (1986).} Thus, if a redistricting plan, by arbitrarily arranging district boundaries so as to give undue advantage to one political group over another, thereby preventing the adversely affected group from improving its standing in elections, consigns that group to minority status during the life of the redistricting plan, or provides that group with little or no chance of improving its position at the next redistricting, that plan is subject to legal challenge.\footnote{63}{A plan that purports to save as many incumbents of a political party as possible at the expense of opposing party candidates is susceptible to a charge of political gerry-}
as legitimate considerations in the redistricting process include respecting local boundaries, making districts compact, preserving the cores of existing districts by not unnecessarily dividing them, and avoiding contests between incumbents.\textsuperscript{64} Compactness generally refers to districts that are regular in shape, having no unnecessary bulges or protrusions. The emphasis on compactness is on eliminating distance variations for constituents and candidates. These principles are not found in the state or Federal Constitution;\textsuperscript{65} however, they are important, along with the other redistricting principles, because they may serve to defeat a claim that a district has been racially gerrymandered.\textsuperscript{66} Implicit in the application of these time-tested principles of redistricting is the view that those who are contained within a district share a commonality of ideas and beliefs, and that any plan that may disrupt this putative cohesiveness, such as splitting boundaries or pitting incumbents against one another, is to be treated with skepticism.

2. Procedural Requirements

The Florida Constitution contemplates that redistricting will be accomplished by joint resolution by the end of the regular legislative session.\textsuperscript{67} This happened only once, however, in 1972. Under the constitutional scheme, if a plan is adopted by the end of the regular session, the Attorney General of Florida then has fifteen days to petition the supreme court for a declaratory judgment ruling on the validity of the plan.\textsuperscript{68} The supreme court then has up to thirty days to both permit adversary interests to submit their views and to enter its judgment.\textsuperscript{69} If the court disapproves the plan adopted during the regular session, the Governor has up to five days to convene by proclamation an extraordinary session of the Legislature.


\textsuperscript{65} See Gaffney v. Cummings, 412 U.S. 735, 752 n.18 (1973).

\textsuperscript{66} See Karcher, 462 U.S. at 725.

\textsuperscript{67} FLA. CONST. art. III, § 16(a).

\textsuperscript{68} Id. § 16(c).

\textsuperscript{69} Id. If approved, the plan becomes law, "binding upon all the citizens of the state," \textit{id.} § 16(d), subject to review by the United States Attorney General under \textsection{5} of the Voting Rights Act, as amended, 42 U.S.C. \textsection{1973c} (1975), which requires preclearance as described above, and subject to the court’s retained jurisdiction.
which has up to fifteen days to adopt a valid plan.\textsuperscript{70} If a plan is adopted, the Attorney General has fifteen days to submit it to the court, which has thirty days to permit adversary interests to present their views and to enter its judgment.\textsuperscript{71} If the plan is disapproved following an extraordinary session, the court has sixty days from the submission by the Attorney General to draw up a plan.\textsuperscript{72} If no plan is adopted by the Legislature during the extraordinary apportionment session, the Attorney General has fifteen days to so inform the court,\textsuperscript{73} which then has sixty days to draw up its own plan.\textsuperscript{74}

If the Legislature is unable to adopt a redistricting plan during its regular session, the Governor has thirty days to convene a special apportionment session by proclamation, giving the Legislature an additional thirty days to adopt a plan.\textsuperscript{75} If no plan is adopted, the Attorney General has five days from adjournment of that session to inform the court, which then has sixty days to adopt its own plan.\textsuperscript{76}

Thus, while the Legislature is given the first opportunity to establish a redistricting plan, there are three instances in which the supreme court may exercise this power: (1) when the Legislature fails to adopt a plan by the end of a special apportionment session; (2) when the Legislature fails to adopt a plan by the end of the extraordinary apportionment session; and (3) when the court invalidates the legislative joint resolution adopted during an extraordinary apportionment session.\textsuperscript{77}

\section*{III. The Constitution in Operation}

\subsection*{A. 1972}

The first opportunity for article III, section 16’s operation took place

\textsuperscript{70} FLA. CONST. art. III, § 16(d).
\textsuperscript{71} ld. § 16(e).
\textsuperscript{72} ld. § 16(f).
\textsuperscript{73} ld. § 16(e).
\textsuperscript{74} ld. § 16(f).
\textsuperscript{75} FLA. CONST. art. III, § 16(a). This 30-day period cannot be limited by the Governor, who may use his discretion only in deciding when this special session will begin, which must be within 30 days after adjournment of the regular session. Florida Senate v. Graham, 412 So. 2d 360 (Fla. 1982). Only apportionment may be considered during this special apportionment session. FLA. CONST. art. III, § 16(a).
\textsuperscript{76} ld. § 16(b).
\textsuperscript{77} 25A FLA. STAT. ANN. 672 (West 1991) (annot. to FLA. CONST. art III, § 16).
in 1972 when the Attorney General petitioned the Florida Supreme Court for a declaratory judgment to determine the validity of a joint legislative resolution adopted during the regular session. In *In re Apportionment Law Appearing as Senate Joint Resolution No. 1305, 1972 Regular Session*, the court held that its review of an apportionment plan is limited to facial validity only, and declared both that legislative reapportionment is primarily a matter for the Legislature, and that "[j]udicial relief becomes appropriate only when a legislature fails to act according to federal and state constitutional requisites." The court was called upon to address the integrity of traditional boundary lines, population deviations and multi-member districts—matters not found in the constitutional provision itself. The court held that there is no requirement for legislative district lines to follow county or precinct lines; the only requirement is that districts be either "contiguous, overlapping or identical territory."82

As to population deviations, the court said:

The Constitutions of Florida and the United States require that one man's vote in a district be worth as much as another. Mathematical exactness is not an absolute requirement in state apportionment plans; however, deviations, when unavoidable, must be de minimis. Whether a deviation is de minimis must be determined on the facts of each case.83

The court noted that the total deviation for the House of Representatives was 0.30% while that of the Senate was 1.15%.84 The issue of minority representation was addressed in connection with the legislative decision to combine single- and multi-member districts in the redistricting plan.

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78. 263 So. 2d 797 (Fla. 1972).
79. Id. at 808.
80. Id.
81. Id. at 800.
82. Id. at 801. Contiguity was not discussed during the 1972 process. It was not until 1982 that the court first addressed contiguity.
83. *In re Apportionment Law Appearing as Senate Joint Resolution No. 1305, 1972 Regular Session*, 263 So. 2d at 802.
84. Id. As previously noted, to determine population deviation for legislative redistricting, it is first necessary to establish each district's ideal population. This is done by dividing the total state population according to the official census by 40 (Senate) and 120 (House), respectively. The deviation is the difference between the ideal population and a district's actual population; the range of deviation is the difference between the least and most populous districts.
On multi-member districts, the court, after considering both article III, section 16(a) and article III, section 1, which provides for the election of one senator from each senatorial district and one representative from each house district, held:

Construing these two sections together, the Constitution requires that there be one senator elected from each Senatorial district and one member of the House of Representatives elected from each representative district. This, standing alone, would require single-member districts. However, the Constitution further provides that districts may be "identical territory." This means that multi-members of the Senate or the House of Representatives may be elected from identical territory if such territory were designated as constituting several districts.85

Thus, the court concluded that multi-member districts are permissible and may co-exist in the same plan with single-member districts. The court found that the plan which divided Florida into 120 house districts of which twenty-one were single-member, ten were two-member, nine were three-member, twenty were four-member, thirty were five-member and thirty were six-member; and into forty senate districts, of which five were single-member, fourteen were two-member, and twenty-one were three-member, was reasonable and did not violate federal constitutional equal protection requirements.86 The supreme court's 1972 decision did not end the matter, for in its opinion, it set its precedent for retaining jurisdiction to permit challengers to question the validity of the plan by presenting specific factual objections to it.

The Constitution Revision Commission's desire to avoid proliferating redistricting litigation was short-lived, as four supplemental proceedings were filed with the supreme court, and a separate lawsuit was filed in federal court in Jacksonville. Soon after the supreme court acted, suit was filed in federal court both by plaintiffs who appeared before the supreme court, in addressing claims of unreasonableness of classifications of single-member and multi-member districts, said it "is not at liberty to declare the . . . plan void because it allegedly creates inconvenience, is unfair, or is inequitable, in the absence of a violation of some provision of the constitution." Id. at 807. Multi-member districts are those from which more than one legislator is elected to represent the area. Single-member districts are those from which only one legislator is elected. The latter is the more common; Florida's Legislature is made up of single-member districts.

85. Id. at 806-07. The court, in addressing claims of unreasonableness of classifications of single-member and multi-member districts, said it "is not at liberty to declare the . . . plan void because it allegedly creates inconvenience, is unfair, or is inequitable, in the absence of a violation of some provision of the constitution." Id. at 807. Multi-member districts are those from which more than one legislator is elected to represent the area. Single-member districts are those from which only one legislator is elected. The latter is the more common; Florida's Legislature is made up of single-member districts.

86. The state court did not address the United States Supreme Court's jaundiced view of multi-member districting plans, namely that they generally pose greater threats to minority-voter participation than do single-member districts. See Burns v. Richardson, 384 U.S. 73, 88 (1966).
court and others who did not, claiming that portions of the redistricting plan created impermissible racial and political gerrymandering. The federal court, after dismissing plaintiffs who appeared in the supreme court for impermissibly seeking to appeal a decision from the state’s highest court, found that the remaining plaintiffs, claiming a one person, one vote violation, failed to meet the high evidentiary burden of intentional discrimination, proof of discriminatory effect on and actual prejudice to identifiable racial or political segments of voters, or racial gerrymandering. A year later, the supreme court held that the legislative plan was not shown to be unconstitutional in its implementation on a claim that it deprived citizens of Lee County of meaningful senatorial representation by the fact that no candidate from that county entered any of the primary elections for seats in the senate in any of the four districts which cut across Lee County lines. In another proceeding, the supreme court rejected a claim that the redistricting plan left voters in Neptune Beach and Jacksonville Beach without an effective voice because the plan did not join these two communities. The court concluded that the plan did not leave Neptune Beach officials without any effective voice in the Legislature; even though the plan assigned the area to senate districts which did not include the consolidated city of Jacksonville. These two cases involved local interests desirous of obtaining a broader political power base through enhanced representation.

Several years after the 1972 redistricting process, the growing influence of minorities manifested itself in redistricting challenges before the Florida Supreme Court. In 1977, the court rejected claims by Dade County Hispanics that their voting strength had been negated because of the large influx of Hispanics into that area of the state, coupled with the fact that the petitioners resided in multi-member districts. A bare majority of the court held that it did not intend to retain jurisdiction over the 1972 plan in order to continuously monitor changing racial, ethnic or population patterns. Finally, in a case that began in 1977 and concluded in 1980, the court rejected a constitutional challenge to the multi-member house districts in Pinellas County, Florida. However, the court appointed a commissioner to take evidence on the claim that the multi-member district constitutionally impaired the voting strength of the racial or political composition of Pinellas

88. Id. at 804.
89. In re Tohari, 279 So. 2d 14 (Fla. 1973).
County. The commissioner’s findings were reported to the court in 1980, and the court denied relief.93

B. 1982

The 1982 Legislature, reflecting on a history of litigation characterizing the redistricting process, approached its mandate from the standpoint of an openness not previously seen in Florida.94 A House Select Committee on Reapportionment was formed in 1980 to analyze case law on the subject and Section 5 of the Voting Rights Act. Section 5 requires federal preclearance, or approval, of any plan that of necessity involves five of Florida’s sixty-seven counties, as a result of amendments adopted after the 1972 redistricting.95 This Select Committee conducted twenty-one public hearings throughout the state from August to October, 1981.96 It considered detailed population data, the dynamics of population growth particularly with respect to minorities, and all criteria applicable to the process.97 Additionally, the Select Committee actually sought and received interest group input.98 The Legislature adopted the plan on April 7, 1982;99 five days later, the Attorney General submitted his petition.100 One month later, the supreme court approved the plan.101 The plan was then submitted to the Department of Justice for preclearance, which was received by the state on August 5, 1982.102

The 1982 redistricting effort is noted for five precedent-setting actions.

93. Milton v. Smathers, 389 So. 2d 978 (Fla. 1980). After conducting fact-finding proceedings, the commissioner found that the multi-member districts did not unconstitutionally impair the voting strength of the district’s Black population. The supreme court’s decision was based on the absence of evidence of intent to discriminate—the critical element in proving a fourteenth amendment violation. Indeed, all of the cases based on the 1972 redistricting process were reviewed under this “intent to discriminate” standard. As shown below, a change in this standard of proof coupled with United States Supreme Court and Department of Justice involvement, paved the way for further and more intensive litigation culminating in the 1992 experience.


95. Id. at 6.

96. Id.

97. Id.

98. Id.

99. See Herron, supra note 94, at 5.

100. Id.

101. Id. at 20.

102. Id.
First, the Legislature had to convene a special session to accomplish its constitutional mandate. Second, the Legislature opted for single-member districts for all forty Senate seats and all 120 House seats, adopting a recommendation made by the 1978 Constitution Revision Commission. The purpose of this shift was to lessen the prospects that minority groups' voting strength would be negated as a result of the winner-take-all nature of multi-member district elections. Third, the Select Committee defined "contiguity." Fourth, detailed consideration was given to representation for the Hispanic and Black population with de minimis population deviation. Finally, a redistricting plan had to be submitted to the DOJ for preclearance under Section 5 of the Voting Rights Act of 1965, as amended, directed to the five counties brought under the law in 1975.

The Florida Supreme Court considered a contiguity challenge to one house district in which challengers contended one portion was only touching another portion and the constitution requires more. The court rejected this challenge, holding that while lands mutually touching only at a common corner or right angle are not contiguous, a district in which no part is isolated from another by an intervening district is contiguous.

The House plan provided seven districts with Hispanic population of fifty-eight percent or higher and seven districts with Black population of fifty-two percent or higher. The Senate plan had one district with a Black population of sixty-five percent and two districts with Hispanic population of fifty-five percent or higher. The total deviation in population among senate and house districts was 1.05% and 0.46%.

103. FLA. CONST. art. XI, § 2(a) provides for the creation of a constitution revision commission 10 years after the adopting of the 1968 Constitution, and every 20 years thereafter.

104. See In re Apportionment Law Appearing as Senate Joint Resolution 1 E, Special Apportionment Session, 414 So. 2d 1040, 1045 (Fla. 1982).

105. Id. at 1051.

106. See Herron, supra note 94, at 7.

107. Id.

108. In re Apportionment Law Appearing as Senate Joint Resolution 1 E, Special Apportionment Session, 414 So. 2d at 1051.

109. Id. "Contiguous" means sharing a common boundary for a reasonable distance; "overlapping" means that some parts of the districts are shared; "identical" applies when districts follow the same lines, as in the case of multi-member districts where a house and senate district may have the same lines or boundaries. Id.

110. Id. at 1045.

111. Id.
respectively. The plan for senate districts maintained the boundary line integrity of forty-five counties by not splitting them; the plan for house districts maintained the integrity of twenty-six counties. In most instances, county lines were split because population was greater than the ideal number of people per district.

The Florida Supreme Court found no proof of purposeful discrimination. The court rejected claims that a district in Dade County had been gerrymandered to the detriment of the Hispanic population, and that in Dade County, districts should be redrawn to provide for a larger concentration of Black voters. The court recognized that challenges are cognizable under the Fourteenth Amendment even though districts may be relatively equal in population. However, in citing to United States Supreme Court cases decided after the 1972 Florida Supreme Court decision validating the 1972 redistricting plan, the court said:

We consider any minority challenge to the plan as raising an issue of whether it invidiously discriminates against any minority group. To show invidious discrimination, the objector to the plan for apportionment must produce evidence which supports the finding that the political process in this apportionment plan was a "purposefully discriminatory denial or abridgment by government of the freedom to vote 'on account of race, color, or previous condition of servitude.'" The objectors have the burden to show this Court that the plan was motivated by an intent to discriminate.

The court concluded that the plan before it did "not invidiously discriminate against any racial or language minority for the purpose of minimizing or canceling the voting strength of either the Black or Hispanic population in violation of either the Fourteenth or Fifteenth Amendments,

112. In re Apportionment Law Appearing as Senate Joint Resolution 1 E, Special Apportionment Session, 414 So. 2d at 1044.
113. Id. at 1045.
114. Id.
115. Id. at 1052.
116. Id.
117. In re Apportionment Law Appearing as Senate Joint Resolution 1 E, Special Apportionment Session, 414 So. 2d at 1052.
118. Id. (citations omitted). The court also decided that senators' four-year terms should be truncated, there could be no "holdover" terms, and senators were required to run if, as a result of redistricting, there is a change in district lines and constituency. Id. at 1047-48.
In contrast to 1972, the openness of the 1982 process and the decision to use single-member districts only (coupled with the high evidentiary burden necessary to prove a constitutional violation), contributed to the least contentious redistricting process in Florida's modern history. The relative ease by which 1982 redistricting was accomplished and the lack of any federal and supplemental state judicial activity is in stark contrast to what transpired in 1992.

C. 1992

The 1992 redistricting process was the end product of an unprecedented population growth and a fundamental change in federal voting rights laws. These two factors clashed with the state's traditional one-party domination of Florida government to produce the most intense legislative district realignment in the state's history, dominated by racial and ethnic minority group efforts to secure a greater piece of the state's political power pie.

According to the 1990 census, the state's population increased during the last decade by more than thirty percent, to just under thirteen million, from a previous 9.7 million. A substantial portion of this phenomenal growth resulted from the immigration of Hispanics from Central and South America. Nowhere was this growth more evident than in heavily populated Dade County. As the number of Hispanics mushroomed, they became increasingly active both civically and politically in their new community. They registered, voted, campaigned for, sought and won election to office as Republicans in what was historically a firmly entrenched Democratic Party stronghold.

The second significant change involved the amendments to the Voting Rights Act of 1965. The amendments altered the method by which a minority group could show a voting practice or procedure, including a redistricting plan, thereby violating its right to fair and equal participation

119. Id. at 1052 (citing City of Mobile v. Bolden, 446 U.S. 55 (1980); Gaffney v. Cummings, 412 U.S. 735 (1973); McGowan v. Maryland, 366 U.S. 420 (1961)).

120. Critics accused the 1972 Legislature leadership of adopting a "secret plan." Herron, supra note 94, at 6-7.

121. As in 1972, the supreme court retained exclusive state jurisdiction to consider challenges to the 1982 plan. In re Apportionment Law Appearing as Senate Joint Resolution 1 E, Special Apportionment Session, 414 So. 2d at 1052.


123. Id. at 280.
As noted above, this change in the legal standard took place at a time of rapid increase in the Hispanic population, particularly in the multicultural population-intense counties of Dade and Hillsborough. These factors, coupled with the rise of the Republican Party in what was traditionally a one-party state, and the enhanced overall consciousness of minority rights generally, set the stage for 1992's redistricting efforts dominated by politics, race and ethnicity.

The battle lines for the 1992 redistricting effort were drawn along political, racial and ethnic lines toward a common goal: the exercise of political power and influence. In addition to the clamor for access to and exercise of political power during this most contentious redistricting cycle, underlying tensions surfaced between Blacks and Hispanics, particularly in Dade County.  

Legislative leaders anticipated heightened activity, particularly by minorities during the 1992 legislative session. Reflecting on the 1982 experience, the leaders began preparing for the session four years earlier. The House and Senate each hired separate expert technical staffs and provided them with state-of-the-art computer systems. Reapportionment committees were appointed in 1991 for the House and Senate, and both chambers hosted thirty-two public hearings throughout the state between September and December, 1991. The purpose of the hearings was to provide for unfettered citizen involvement in the development of a constitutional redistricting plan, and to educate the public on the subject and its process.

On January 14, the first day of the 1992 Florida legislative session, Miguel DeGrandy filed a lawsuit in federal court challenging the constitutionality of Florida's then-existing congressional and state legislative districts. DeGrandy, a Republican member of the Florida House of Representatives from Dade County, joined with party leaders, other Republican legislators and voters, in naming as defendants the Speaker of the House of Representatives, T. K. Wetherell, the President of the Florida Senate,

124. Id.
125. In Meek v. Metropolitan Dade County, 985 F.2d 1471, 1481 (11th Cir. 1993), involving a Voting Rights Act claim that the at-large county commission election districts dilute the voting strength of Blacks and Hispanics, the appeals court found that a district court's finding of a "keen hostility" between Blacks and Hispanics in Dade County is not clearly erroneous.
Gwen Margolis, the Governor, Attorney General, and Secretary of State.\textsuperscript{128} The Complaint alleged that the then-existing congressional and state districts violated both the Equal Protection Clause of the Fourteenth Amendment to the Federal Constitution and the Voting Rights Act of 1965, as amended.\textsuperscript{129}

After preliminary procedural skirmishes, DeGrandy filed a Second Amended Complaint on March 9th\textsuperscript{130} further alleging that the then-existing congressional and legislative districts violated Article I, Section 2 of the United States Constitution and the “one-person, one-vote” principle, and that since the former districts diluted the voting strength of minority voters, they violated the Voting Rights Act of 1965, as amended.\textsuperscript{131} DeGrandy also alleged that the Florida Legislature was at an impasse and therefore unable to act; that the time frame for redistricting set forth in the Florida Constitution, article III, section 16, in light of the preclearance requirements of Section 5 of the Voting Rights Act, would not provide for sufficient time to adopt a valid redistricting plan for the State Legislature and that therefore this provision was unconstitutional;\textsuperscript{132} and that the democratic leadership, the Speaker of the House, President of the Senate, and Governor, “intentionally misused the time lines and procedures found in Article III . . . to delay the redistricting process to the advantage of white (democratic) incumbents and to the detriment of voters and would-be challengers to those incumbents.”\textsuperscript{133}

On March 13, the Florida Legislature adjourned its regular session without adopting a state redistricting plan.\textsuperscript{134} Two weeks later, the federal court established an expedited schedule for adoption of both congressional and state legislative plans by May 29.\textsuperscript{135} However, the court’s order did not prohibit state officials from attempting to enact a redistricting plan.\textsuperscript{136} On April 2, the Governor called a special redistricting and apportionment session of the Florida Legislature pursuant to article III, section 16(a) of the Florida Constitution. Eight days later, the Legislature adopted Senate Joint Resolution 2G redistricting both houses of the Legislature.\textsuperscript{137}

\begin{itemize}
\item \textsuperscript{128} Id.
\item \textsuperscript{129} Id.
\item \textsuperscript{130} Id. Specific dates are included here to demonstrate the intensity of the litigation.
\item \textsuperscript{131} Id.
\item \textsuperscript{132} DeGrandy, 815 F. Supp. at 1554. The federal court never ruled on this claim.
\item \textsuperscript{133} Id. at 1555.
\item \textsuperscript{134} Id.
\item \textsuperscript{135} Id.
\item \textsuperscript{136} Id.
\item \textsuperscript{137} DeGrandy, 815 F. Supp. at 1555.
\end{itemize}
Four days before the Legislature adopted a redistricting plan, the federal court appointed a special master. On April 7, the court consolidated the DeGrandy case with a similar lawsuit filed by the Florida State Conference of the NAACP Branches and other individual African-American voters. The court also granted other persons and entities leave to intervene or act as amicus curiae.

On April 17, the Florida Attorney General submitted Senate Joint Resolution 2G to the DOJ for preclearance pursuant to Section 5 of the Voting Rights Act. That same day, the three-judge federal court ordered bifurcated hearings on congressional redistricting and state redistricting plans. Meanwhile, three days after the April 10 legislative adoption of Senate Joint Resolution 2G, the Florida Attorney General petitioned the Florida Supreme Court for a declaratory judgment determining the validity of the joint resolution. Before the supreme court, the proponents of the senate joint resolution contended that because the court’s analysis is directed solely to facial constitutional validity of the legislation, the court could not address the complex evidentiary standard imposed on those who challenge a redistricting plan under the Voting Rights Act. Opponents of the senate joint resolution, also the intervenors to the federal court litigation, contended that the supreme court could not fulfill its duty without conducting a time-consuming analysis under the Voting Rights Act—an impossible burden in light of time constraints on campaigning and elections. The opponents further requested that the court declare the joint resolution facially invalid. They also argued that the court should

138. Id.
139. Id.
140. Id.
141. Id.
142. DeGrandy, 815 F. Supp. at 1555. The adoption of a congressional redistricting plan is accomplished in the same manner as the adoption of any piece of Legislation—approval by both houses of the Legislature and subject to gubernatorial veto. In 1992, the Legislature was unable to adopt a congressional redistricting plan; therefore, the federal court undertook the task and appointed a special master, who presided over a trial and prepared a report. After receiving the special master’s report on congressional redistricting, and conducting hearings on his findings and conclusions, the federal court, on May 29, issued its judgment adopting a congressional redistricting plan. DeGrandy v. Wetherell, 794 F. Supp. 1076, 1081 (N.D. Fla. 1992).
143. In re Constitutionality of Senate Joint Resolution 2G, Special Apportionment Session 1992, 597 So. 2d at 278.
144. Id. at 281-82.
145. Id. at 282.
146. Id.
disregard the thirty-day requirement of the Florida Constitution redistricting provision and refer the case to a judge or master to conduct the necessary fact-finding analysis contemplated by the Voting Rights Act or withhold ruling and defer to the federal court action.\textsuperscript{147}

The supreme court rejected the view that it could not conduct a Voting Rights Act analysis in evaluating the validity of the plan.\textsuperscript{148} The court, while recognizing the impossibility of conducting "the complete factual analysis contemplated by the Voting Rights Act . . . ,"\textsuperscript{149} nevertheless analyzed all of the statistical data filed by the parties. This data included the breakdown of White, Black, and Hispanic voting-age populations and voting registrations.\textsuperscript{150} The court then analyzed numerous legislative districts contained in Senate Joint Resolution 2G, particularly Hispanic and Black majority districts, and concluded that the plan was valid.\textsuperscript{151} However, as in the past, the court retained exclusive jurisdiction to provide "any interested person . . . the opportunity to attempt to prove that the Joint Resolution is invalid through a presentation of evidence in accordance with the Gingles analysis of the Voting Rights Act."\textsuperscript{152} Should such an opportunity be sought, the court provided "for an expedited disposition through the appointment of a commissioner to make findings of fact."\textsuperscript{153} The supreme court's validation of the plan took place over a vigorous dissent by Chief Justice Shaw, who found the redistricting plan invalid under the Voting Rights Act.\textsuperscript{154}

When considering total population, the legislatively adopted plan included thirteen Black majority population house districts and three Black influence districts in which minority population exceeded twenty-five percent but was less than fifty percent.\textsuperscript{155} The plan also provided for two Black majority population senate districts (both in Dade County) and three

\begin{itemize}
\item \textsuperscript{147} Id.
\item \textsuperscript{148} In re Constitutionality of Senate Joint Resolution 2G, Special Apportionment Session 1992, 597 So. 2d at 282.
\item \textsuperscript{149} Id.
\item \textsuperscript{150} Id.
\item \textsuperscript{151} Id. at 285.
\item \textsuperscript{152} Id.
\item \textsuperscript{153} In re Constitutionality of Senate Joint Resolution 2G, Special Apportionment Session 1992, 597 So. 2d at 286. This is what the supreme court did in Milton v. Smathers, 351 So. 2d 24 (Fla. 1977).
\item \textsuperscript{154} In re Constitutionality of Senate Joint Resolution 2G, Special Apportionment Session 1992, 597 So. 2d at 287-93 (much of Chief Justice Shaw's analysis is found in the federal court's decision).
\item \textsuperscript{155} Id. at 282.
\end{itemize}
Black influence districts with minority population ranging from twenty-eight percent to forty-nine percent. 156 With regard to Hispanic representation, the court noted that the plan provided for nine majority house districts and seven influence districts, the latter ranging in population from twenty-six percent to forty-six percent. 157 The plan created three Hispanic majority senate districts. 158 When voting-age population is considered, the joint resolution provided for eleven Black majority and two influence districts in the House, and two majority and one influence district in the Senate. 159

The court noted that the 1982 plan contained seven Black house districts, seven majority Hispanic districts, "only 1" Black majority senate district and "only 2" Hispanic majority senate districts. 160 The court observed that the 1992 plan was accomplished with maximum population deviations of 1.99 percent in the house districts and 0.87 percent in the senate districts, and thus concluded "[t]he 1992 plan is a material improvement over conditions under the 1982 plan . . . and provides a substantial opportunity for minorities to influence elections and elect representatives of their choice." 161

These findings did not satisfy the objectors, however, who, although given the opportunity to press their specific voting rights claims before the supreme court, 162 never did. Instead, the objectors engaged in unsuccessful efforts to remove the supreme court proceedings to federal court and thereby ousted the supreme court of its jurisdiction. 163 The parties returned to the supreme court only to address the Section 5 objection by the Justice Department. The objectors to the joint resolution wanted to wage their fight in federal court to create more minority districts. 164

The Florida Supreme Court also had occasion to address contiguity for

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156. Id. at 283. An influence district is one in which a minority, while it may not be able to elect a candidate outright, nevertheless has a sizeable enough population to influence the outcome of the election, when the minority vote is added to the non-minority crossover vote. Id. at 282-83 n.8.
157. Id. at 283.
159. Id. at 282-83.
160. Id. at 284.
161. Id. at 285.
162. Id. at 285-86.
164. As demonstrated by the voluminous filings in DeGrandy, 815 F. Supp. at 1550.
the second time. 165 Four senate districts were challenged because, as a result of the lack of roads or the presence of bodies of water without connecting bridges, travel throughout these four districts could not be accomplished without crossing into another district. 166 The court held that these districts are contiguous because “[c]ontiguity does not impose a requirement of a paved, dry road connecting all parts of a district.” 167

The supreme court’s decision was issued on May 13. On May 27, the federal court held a hearing on all pending motions, including those designed to set trial on legislative redistricting, as well as those designed to secure the federal court’s deference to the state legislative and judicial review process. 168 At that hearing, the federal court learned from the DOJ that it probably would issue its preclearance decision by June 17, 1992. 169

On June 16, the DOJ issued its preclearance decision, emphasizing that its Section 5 review addressed the plans only insofar as the five preclearance counties (Collier, Hardee, Hendry, Hillsborough and Monroe) were affected. 170 The Attorney General of the United States did not interpose any objections to the redistricting plan for the House of Representatives. 171 The DOJ, however, refused to preclear the Senate Plan stating:

With regard to the Hillsborough County area, the state has chosen to draw its senatorial districts such that there are no districts in which minority persons constitute a majority of the voting age population. To accomplish this result, the state chose to divide the politically cohesive minority populations in the Tampa and St. Petersburg areas. Alternative plans were presented to the legislature uniting the Tampa and St. Petersburg minority populations in order to provide minority voters an effective opportunity to elect their preferred candidate to the State Senate . . . [T]he information before us, including the economic and other ties between Tampa and St. Petersburg, as well as the political cohesiveness of minority voters in those two cities, demonstrates that the two areas do share a commonality of interest. Finally, we have examined evidence, including evidence in the legislative record, which suggests that the state’s approach to senatorial redistricting in the

166. Id.
167. Id.
169. Id.
170. Id. at 1556.
171. Id.
Hillsborough area was undertaken with an intent to protect incumbents. Such a rationale, of course, cannot justify the treatment of minority voters in this area by the State Senate plan.\footnote{Id. (quoting letter from John Dunne, Assistant Attorney General, Civil Rights Division, United States Department of Justice, to Robert A. Butterworth, Florida Attorney General (June 16, 1992)).}

At the request of the Attorney General of Florida, the supreme court set an expedited schedule to address the Justice Department’s objections to the Senate plan.\footnote{DeGrandy, 815 F. Supp. at 1556.} In its order of June 17, 1992, the supreme court encouraged the Legislature to adopt a proper plan, taking into consideration the Justice Department objections.\footnote{Id.} The supreme court cautioned that if the Legislature declared its inability to adopt a plan, or failed to adopt a plan by June 24, 1992, the court would conclude that the Legislature is at an impasse, upon which the court would accomplish the task.\footnote{Id.} The supreme court also set out an abbreviated schedule within which redistricting action had to be taken.\footnote{Id.} On the following day, House Speaker Wetherell and Senate President Margolis informed the supreme court of their decision not to convene their respective chambers in an extraordinary apportionment session.\footnote{Id.} The court was also informed that the Governor did not intend to convene the Legislature.\footnote{DeGrandy, 815 F. Supp. at 1556.} As a result, the supreme court declared a legislative impasse and adopted an amended schedule.\footnote{Id.}

Meanwhile, plaintiffs in the federal court action, upon notice of the DOJ’s refusal to preclear the Senate plan, immediately asked that forum to establish a scheduling order and set the matter for trial on legislative redistricting, and filed yet another Amended Complaint contending that the joint resolution itself violated Section 2 of the Voting Rights Act.\footnote{Id. at 1558.} Thus, rather than litigating Section 2 claims in the supreme court pursuant to its retained jurisdiction, objectors to the plan opted for federal court involvement.

Challengers to the plan raised jurisdictional questions both in the supreme court and federal court.\footnote{Id. at 1557.} The Florida Supreme Court, address-
ing the questions, said:

The reapportionment of state legislative bodies is not a power delegated by the Constitution of the United States to the federal government. Under the provisions of the Tenth Amendment to the United States Constitution, this is a power reserved to states. Of course, this Court is obligated to apply any applicable federal constitutional provisions and any federal statutes implementing these provisions.

The Florida Constitution places upon this Court the responsibility to review state legislative reapportionment. Art. III, § 16, Fla. Const. Pursuant to that authority, we approved the original legislative reapportionment and retained jurisdiction to entertain subsequent objections thereto. Consistent with the provisions of art. III, section 16 of the Florida Constitution, we believe that it is our obligation to redraw the plan to satisfy the objection of the Justice Department now that the Legislature has declared that it is not going to do so.\(^{182}\)

On June 25, the supreme court adopted, as a cure for the portion of the plan rejected by the DOJ, a proposal submitted by certain African-American parties.\(^{183}\)

Two days before the supreme court issued its curative decision, the DOJ filed its own lawsuit in federal court against the State of Florida and several elected officials,\(^{184}\) contending that the redistricting plans diluted the voting strength of African-American and Hispanic citizens in several areas of the state in violation of Section 2 of the Voting Rights Act,\(^{185}\) and that the state’s proposed Senate plan for the Hillsborough County area divides the politically cohesive minority population in the Tampa and St. Petersburg areas, such as there are no senatorial districts in which minority persons constitute a majority of the voting age population.\(^{186}\)

\(^{182}\) Id. (citing In re Constitutionality of Senate Joint Resolution 2G, Special Apportionment Session 1992, 601 So. 2d 543, 545 (Fla. 1992)).

\(^{183}\) DeGrandy, 815 F. Supp. at 1557 (citing In re Constitutionality of Senate Joint Resolution 2G, Special Apportionment Session 1992, 601 So. 2d at 546). The remedial plan selected was the one submitted to the supreme court by the Humphrey-Reaves plaintiffs.

\(^{184}\) Id.

\(^{185}\) Id. at 1557-58.

\(^{186}\) Id. at 1558. The DOJ expressed its view that the supreme court’s modification for the Hillsborough County area satisfied its Section 5 objection. However, the Department did not officially preclear the modification decision. Accordingly, the three-judge court adopted the supreme court’s modification as its own for Section 5 purposes, thereby precluding the need for Justice Department preclearance. Id. Wise v. Lipscomb, 437 U.S. 535 (1978),
The DOJ’s lawsuit was consolidated with DeGrandy’s action.¹⁸⁷ DeGrandy was then permitted to amend his Complaint to allege Section 2 violations as to Senate Joint Resolution 2G as now modified.¹⁸⁸ On June 26, the federal court, one day after the supreme court adopted its remedy for the Justice Department’s objection, commenced trial which lasted five days, through July 1. During the trial, the parties entered into a consent decree with respect to the Escambia County portion of the lawsuit by redrawing the Escambia County house districts to provide for greater African-American participation.¹⁸⁹ The agreement on Escambia County was reached after the court ruled from the bench that the plaintiffs established a prima facie case on a constitutional violation of intentional discrimination in Escambia County.¹⁹⁰

On July 1, after testimony and argument had been concluded, the court ruled from the bench that, with respect to the Senate plan, although the plaintiffs demonstrated that a fourth Hispanic district can be drawn in the Dade County (South Florida) area, they failed to prove that a fourth Hispanic district can be drawn without creating a regressive effect upon African-American voters in the same area.¹⁹¹ Therefore, the federal court was required to give deference to the state policy as expressed in the Florida plan, Senate Joint Resolution 2G as modified, and ultimately approved by the supreme court.¹⁹²

With respect to the House plan, the federal court took note that the Senate Joint Resolution created thirteen minority-majority districts of which nine had Hispanic voting-age population supermajority districts and four had African-American voting age population majority districts.¹⁹³ The DeGrandy plan, as modified during the trial, provided for eleven Hispanic south Florida districts of supermajority proportion, each containing no less than sixty-three percent Hispanic voting age population.¹⁹⁴ The modified DeGrandy plan also provided for four African-American districts containing

¹⁸⁸. Id. at 1559.
¹⁸⁹. Id. at 1560.
¹⁹⁰. Id. Only plaintiff-intervenor Daryl Reaves, a member of the State House, was not a party to the Escambia County consent decree. Id.
¹⁹². Id.
¹⁹³. Id. at 1580.
¹⁹⁴. Id. at 1581.
Black voting-age population percentages of no less than fifty-five per-
cent.\textsuperscript{195}

The federal court concluded that only the modified DeGrandy plan was
acceptable under Section 2 of the Voting Rights Act.\textsuperscript{196} By its action, the
federal court thus concluded—contrary to the supreme court’s view that the
joint resolution represented a significant improvement for minorities over
1982—that because four Hispanic senate seats (instead of the Legislature’s
three) and eleven Hispanic house seats (instead of the Legislature’s nine)
could have been created for the Dade County area, the state plan \textit{ipso facto}
violates Section 2 of the Voting Rights Act, and the modified DeGrandy
plan would be used for the 1993 elections.

Immediately thereafter, the government defendants applied for a stay
from the United States Supreme Court as to the federal court’s decision on
the House plan. Upon application to that Court, the federal district court’s
House plan with respect to Dade County was stayed.\textsuperscript{197} Accordingly,
when the 1992 elections were held for the Florida Legislature, the plan
adopted by the Florida Legislature, as modified and approved by the
supreme court, was the plan used for those elections. The three-judge court
decision is before the United States Supreme Court in the form of three
separate appeals which have been consolidated for briefing, argument and
disposition.

In its appeal to the United States Supreme Court, the House of
Representatives contends that the federal court’s plan constitutes maximiza-
tion\textsuperscript{198} of electoral opportunities in violation of Section 2 of the Voting
Rights Act because the legislative plan already provides that minorities have
the opportunity to elect candidates in numbers essentially equal to the
minorities’ percentages of the population. The House further contends that
the district court erred by not abstaining and deferring to the state constitu-
tional process, contending that the state supreme court is the proper forum
to address redistricting concerns. Finally, the House maintains that the
remedy imposed by the court is flawed in that the court relied on erroneous
population data by considering Hispanic non-citizens in the voting-age

\textsuperscript{195} Id. Unlike the joint resolution, the modified \textit{DeGrandy} plan reached beyond Dade

\textsuperscript{196} Id. at 1582.

\textsuperscript{197} Wetherell v. DeGrandy, 113 S. Ct. 1 (1992) (order of the United States Supreme
Court granting stay).

\textsuperscript{198} Maximization means drawing the greatest, or maximum, number of majority
minority districts and that the failure to do so constitutes a Voting Rights Act violation.
population equation.\textsuperscript{199}

The DeGrandy plaintiffs contend that the federal court erred by not providing a complete remedy once it found a violation of Section 2 with respect to the Senate redistricting plan.\textsuperscript{200} The DOJ appeal is essentially similar to that presented by the DeGrandy plaintiffs.\textsuperscript{201}

A reading of the chronology of events pertaining to legislative redistricting, as contained in the two Florida Supreme Court decisions and the federal district court decision, provides the flavor of political, racial and ethnic battles that overshadowed redistricting during 1992. During the litigation before the two judicial forums, there was much talk about the unusual alliance forged between Blacks and Hispanics, particularly since it was understood among insiders that Hispanics, who generally vote republican in Dade County, were in actuality seeking to sever Black voters from traditional democratic jurisdictions and place them into their own majority districts, thereby giving Hispanic Republicans a greater opportunity to elect Republicans in those now-diluted democrat districts.

Because the primacy of racial and ethnic representation mandated by federal law transcended all of the other factors that inhere to redistricting, district compactness took on an "Alice in Wonderland" reality. Odd-shaped, elongated, snake-like, Rorschach ink-blot district lines drawn to accommodate racial and ethnic population patterns were nevertheless deemed compact because these districts—regardless of shape—represented an identifiable community and constituency.

The vitality of these odd-shaped districts drawn to accommodate minority representation is suspect as a result of the United States Supreme Court’s decision in Shaw v. Reno.\textsuperscript{202} Shaw involved the drawing of a redistricting plan for North Carolina by the Legislature in response to a Section 5 objection by the United States Attorney General.\textsuperscript{203} White residents challenged a portion of this plan creating a congressional district that, for the most part, was no wider than the Interstate 85 corridor, and drawn to create a black-majority district.\textsuperscript{204}

The Court held that the residents stated a justiciable claim under the Equal Protection Clause, holding that "a plaintiff challenging a reapportionment statute under [this clause] may state a claim by alleging that the
legislation, though race-neutral on its face, rationally cannot be understood as anything other than an effort to separate voters into different districts on the basis of race, and that the separation lacks sufficient justification.\textsuperscript{205} The emphasis of this decision is that traditional notions of compactness will not be sacrificed solely for racial purposes in the absence of "sufficient justification."\textsuperscript{206}

It is risky indeed to attempt to predict the outcome of a case pending before the United States Supreme Court. However, it is evident from the redistricting decisions issued during the 1992-93 term that the Court is protective of the traditional deference accorded the state in the exercise of its redistricting responsibilities,\textsuperscript{207} while frowning upon the creation of districts solely for racial purposes.\textsuperscript{208}

The most significant issue now before the Court concerns maximization of minority districts.\textsuperscript{209} In light of Shaw v. Reno, and since the Voting Rights Act specifically provides that there is no right to proportional representation for minority groups,\textsuperscript{210} it appears the Court will reject the notion that the Act requires the creation of the maximum number of minority districts, however configured. Race and ethnicity will remain factors to be considered in the redistricting process, along with other traditional considerations (compactness, respecting existing boundaries, etc.); however, race and ethnicity will not be exclusive factors, at least in the absence of a clear showing of a constitutional violation.

The bottom line, however, is that the Voting Rights Act and population dynamics together fired a political power struggle that led to the most divisive redistricting process in Florida's history. As a result of this divisive

\footnotesize{205. Id. at 2828.}
\footnotesize{206. Id. at 2826. While the Voting Rights Act will not permit a redistricting plan "so highly irregular that, on its face, it rationally cannot be understood as anything other than an effort to segregat[e] . . . voters on the basis of race." Shaw, 113 S. Ct. at 2826 (quoting Gomillion v. Lightfoot, 364 U.S. 339, 341 (1960)). The use of bizarre districting is not precluded by this decision, or Supreme Court precedent. See, e.g., Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 27 (1971). The Court, in dealing with a long history of state-imposed unconstitutional school discrimination, approved "a frank—and sometimes drastic—gerrymandering of school districts and attendance zones," resulting in "zones [that] are neither compact nor contiguous; indeed they may be on opposite ends of the city." Id. Thus, it appears the Constitution permits what the Voting Rights Act does not; traditional notions of compactness may be sacrificed to remedy a constitutional violation, but not to remedy a statutory infirmity.}
\footnotesize{207. See Voinovich v. Quilter, 113 S. Ct. 1149, 1156 (1993).}
\footnotesize{208. See Shaw, 113 S. Ct. at 2828.}
\footnotesize{209. See DeGrandy, 815 F. Supp. at 1550.}
process, proposals were submitted to the Legislature in 1993 by Democrats and Republicans, Blacks and Hispanics alike, to either remove the Legislature entirely from the districting process or otherwise involve another entity in it.

IV. A GLIMPSE OF THE FUTURE?

In a concurring opinion in In re Constitutionality of Senate Joint Resolution 2G, Special Apportionment Session 1992, Justice Ben Overton suggested that a 1978 Constitution Revision Commission proposal calling for the creation of a Reapportionment Commission, and providing for specific redistricting standards be reexamined for placement on the ballot. One legislative proposal submitted in 1993 called for the creation of a commission consisting of seven members, none of whom may be elected public officials, party officers, registered lobbyists or legislative employees. Six would be selected by the chief justice of the supreme court, five of whom must be selected from recommendations made by the chief judge of the five district courts of appeal. Each chief judge would recommend three individuals who met the qualifications set out above. The chief justice would appoint at least one member of each racial or language minority group that comprised ten percent of the population of the state as shown by the most recent federal decennial census.

The chief justice would be authorized to disregard the recommendations if they did not permit such appointments. Within thirty days after the appointments were made, the six commissioners would have to select by majority vote of at least four, a seventh commissioner who would serve as chair. The Commission would be authorized to hold hearings and to take action in accordance with specific reapportionment standards. Once the Commission completed its plan, it would file it with the Secretary of State, and within fifteen days of that filing, the Attorney General would petition the supreme court for its approval. Another proposal called for the creation of a commission to undertake the task in the event the Legislature fails to fulfill its redistricting obligation.

In Florida, as in most states, it is the Legislature that is called upon initially to undertake the redistricting process. The stark reality of this fact is that legislators, with an eye to their political careers, are expected to rise above partisan politics and pragmatic self-survival by fairly and lawfully

211. 597 So. 2d 276 (Fla. 1992).
212. Id. at 286.
redistricting—even at their own expense.

It appears to have taken three redistricting cycles for some of Florida’s political leaders (and the people they represent) to address whether it may be asking too much for our legislators to redistrict, as constitutionally required, without concern for political survival. No doubt the suggested shift to a commission is reflective of this political reality. By operation of article XI, section 2 of the Florida Constitution, a constitution revision commission will be established in 1998. Perhaps Florida voters will have a chance to consider at that time whether the current method of redistricting, with its political storm and stress, should give way to an alternative approach.

Whether a commission approach is more appealing in light of the political exigencies involved in the appointment process remains to be seen. The fact of the matter is that the Legislature apparently wants to avoid putting itself and the citizens of the state through another contentious, hostile redistricting process, a process that historically is steeped in litigation.

Perhaps, after more than thirty years of redistricting litigation, representation percentages are such as to provide all citizens with a fair, level playing field where each group has equal opportunity to participate in, and realize the fruits of, the political process. If this is so, then perhaps contentious, protracted litigation will be relegated to history.

V. CONCLUSION

The history of redistricting litigation in Florida exemplifies the shifting political sands from rural to urban concentration, coupled with rapid Hispanic migration and the rise of minority influence in tandem with a change in federal law protective of minority rights. In hindsight, it was inevitable that, by casting the judiciary into the political thicket of apportionment and redistricting, this most fundamental process in a democratic form of government would become steeped in political power entanglements in which the federal courts would be regarded as the ultimate referee.

The state constitutional process under article III, section 16 of the Florida Constitution was born of, and nurtured by, litigation over the...
ultimate exercise of political power, predominantly by Blacks and Hispanics seeking a greater voice in the democratic process by resorting to remedies provided by changing federal law. The intensity of the conflict in 1992 led to a bipartisan move to change the present system. Whether change comes about, and whether any change will be for the better, is speculative at best.

If there is a single message to be learned from Florida’s redistricting history under its constitution, it is that as the voices of minority groups grow louder, so will their insistence on a correspondingly greater voice in the exercise of political power. The overriding goal is fairness—a level playing field where all participants have a voice, the strength of which is unrestricted by racial or ethnic status alone. Perhaps the most recent litigation experience achieves this laudable end; only the ameliorative effect of time will tell. If, however, this goal remains unattainable in the minds of some, then intensely litigating future redistricting efforts, even to the point of using increased minority group leverage to further a political party’s personal agenda, looms on the horizon.