

>> ALL RISE.
HEAR YE, HEAR YE, HEAR YE.
SUPREME COURT OF FLORIDA IS NOW
IN SESSION.

ALL WHO HAVE CAUSE TO PLEAD,
DRAW NEAR, GIVE ATTENTION AND
YOU SHALL BE HEARD.

GOD SAVE THESE UNITED STATES,
THE GREAT STATE OF FLORIDA AND
THIS HONORABLE COURT.

>> LADIES AND GENTLEMEN.
THE SUPREME COURT OF FLORIDA.
PLEASE BE SEATED.

>> GOOD MORNING AND WELCOME TO
THE FLORIDA SUPREME COURT.
THIS MORNING WE HAVE ON OUR
DOCKET ONE CASE, IN RE: JOINT
LEGISLATIVE APPROVAL OF
APPORTIONMENT.

DURING THE PROCEEDINGS WE'LL
TAKE TWO BREAKS.

WE'LL BREAK FOR 10 MINUTES
AFTER THE INITIAL ARGUMENT OF
THE PROPONENTS.

WE WILL BREAK AGAIN FOR 10
MINUTES AFTER THE ARGUMENT OF
THE OPPONENTS.

AND THEN WE'LL COME BACK FOR
THE REBUTTAL AND ADJOURN AFTER
THAT.

>> MR. ^CHIEF JUSTICE, EXCUSE
ME, MEMBERS OF THE COURT, MY
NAME IS GEORGE MEROS.

I'M WITH GRAY ROBINSON.

ALONG WITH ME ARE ALLEN WINSOR,
CHARLIE WELLS AND C.B. UPTON.

WE HAVE THE HONOR AND PRIVILEGE
REPRESENTING THE SPEAK OF THE
HOUSE, DEAN CANNON AND THE
HOUSE OF REPRESENTATIVES IN
THIS MATTER.

AFTER TWO YEARS OF INTENSE
PREPARATION THOUSANDS OF HOURS
OF PAINSTAKING WORK THE HOUSE
PRESENTED TO YOU A MAP FULLY
COMPLIANT WITH ALL THE

REQUIREMENTS OF FLORIDA AND
FEDERAL LAW.

THE HOUSE RECOGNIZES AND FULLY
APPRECIATES THAT AMENDMENT 5
CHANGED THE LANDSCAPE IN
REDISTRICTING AND IT IS EQUALLY
TRUE THAT THE HOUSE HAD
SUBSTANTIAL CONCERNS ABOUT HOW
PRACTICALLY TO IMPLEMENT THESE
STANDARDS BUT NONE OF THOSE
CONCERNS MATTER ANYMORE.

WHAT THE HOUSE HAS DONE IN
RESPONSE TO THE STANDARDS IS TO
DEVELOP A SYSTEMIC, CAREFUL,
COHERENT APPROACH ON HOW TO
APPLY AND IMPLEMENT ALL OF THE
STANDARDS.

THIS HOUSE MAP DOES SO AND DOES
SO WITHOUT ANY NEFARIOUS
INTENT.

I KNOW THE COURT IS
WELL-PREPARED AND HAS REVIEWED
EVERYTHING AND SO I WOULD OFFER
MYSELF TO ANSWER ANY QUESTIONS
OR CONCERNS THE COURT MAY HAVE
ABOUT THE HOUSE MAP.

>> WHAT IS THE STANDARD OF
REVIEW THAT YOU WOULD ADVOCATE
WE SHOULD APPLY IN REVIEW THE
LEGISLATIVE PLAN?

>> THE SAME STANDARD OF
REVIEW, YOUR HONOR, THAT
APPLIED IN EARLIER TIMES AND
REITERATED IN 2002 AND THAT
THERE IS A SUBSTANTIAL
DEFERENCE TO THE LEGISLATIVE
EFFORTS AND THAT IS
PARTICULARLY TRUE NOW THAT
THERE ARE ADDITIONAL STANDARDS
THAT HAVE TO BE BALANCED.
ONE THING THAT IS ABSOLUTELY
CLEAR FROM THESE STANDARDS IS
THAT YOU HAVE TO, IT'S
ESSENTIALLY A MATRIX OF TIER
1 STANDARDS AND ANOTHER
MATRIX OF TIER 2 STANDARDS.

>> BUT BECAUSE THERE ARE NEW STANDARDS SHOULDN'T THE COURT HAVE AN ADDITIONAL OBLIGATION HERE?

BECAUSE IN PREVIOUS YEARS WE HAVE ALL GONE ON THE SAME STANDARD.

THERE HAS BEEN NO CHANGE BUT WITH THIS NEW CHANGE SHOULDN'T THE COURT HAVE AN ADDITIONAL OBLIGATION TO MAKE SURE, I MEAN EVEN IF THERE WAS NO PROPONENT, OPPONENT OF THIS, WOULDN'T THE COURT HAVE AN OBLIGATION TO MAKE SURE THAT THESE MAPS ARE IN KEEPING WITH THE NEW STANDARDS THAT THE PEOPLE OF THIS STATE HAVE VOTED FOR?

>> THE COURT CERTAINLY HAS AN OBLIGATION TO REVIEW THE MAPS AND TO DETERMINE WHETHER OR NOT THEY COMPLY BUT THAT DOESN'T CHANGE THE FUNDAMENTAL SEPARATION OF POWERS THAT THIS COURT HAS RECOGNIZED IN 2002 AND BEFORE THAT, THAT THE COURT IN BALANCING THESE STANDARDS HAS TO BE ACCORDED DEFERENCE. AND IN PARTICULAR THESE STANDARDS NOW MAKE THAT MORE APPARENT.

>> WHAT EXACTLY DOES THAT MEAN? I GUESS I'M NOT REAL SURE AS TO WHAT THAT MEANS IF YOU'RE SAYING WE'RE SUPPOSED TO GIVE THESE MAPS DEFERENCE AND TO A CERTAIN EXTENT THAT'S PROBABLY TRUE BUT SINCE THE LEGISLATURE HAS NOT HAD TO DEAL WITH THESE SAME, THESE NEW STANDARDS BEFORE EITHER, I THINK WE ALL HAVE A DIFFERENT OBLIGATION HERE TO LOOK AT THESE IN MORE IN DEPTH.

>> I DON'T, I DON'T HAVE ANY PROBLEM WITH THE NOTION THAT

THE COURT MUST LOOK AT THESE
MAPS IN DEPTH.

NOW OF COURSE THERE IS A
QUESTION ABOUT WHEN THAT CAN BE
DONE AND WHAT FACTS AND WHEN
THOSE FACTS CAN BE ADJUDICATED.

>> I HAVE A QUESTION, I HAVE A
QUESTION ON THAT BECAUSE I HAVE
EXPRESSED BEFORE MY CONCERN
WITH PROCESS.

>> YES, SIR.

>> AND HOW THIS THING IS
CONSTITUTIONALLY STRUCTURED AND
THOSE FRUSTRATIONS.

AND NOW WE SEEM TO HAVE, WE DO
HAVE, NOT SEEM TO, DO HAVE
ADDITIONAL STANDARDS PLACED ON
TOP OF WHAT IS THERE BUT NO
CHANGE IN THE PROCESS.

WOULD YOU SHARE WITH US YOUR
VIEW AS YOU'RE GETTING INTO
THIS ABOUT THE, WHAT DO WE DO
WITH THOSE THAT, THAT I GUESS
LEAN MORE TOWARD A FACTUAL
ISSUE THAN JUST A PURE LEGAL
ISSUE?

I HOPE THAT'S WHERE YOU'RE
GOING WITH THIS.

>> YES, SIR. BOTH THE ISSUE OF
DEFERENCE AND WHAT IS ISSUE OF
FACIAL REVIEW PARTICULARLY NOW
WITH THESE STANDARDS.

I THINK THE WAY THE COURT
SHOULD APPROACH IT AND HAS IN
THE PAST TRIED TO APPROACH IT
IS IF THERE ARE MATERIAL FACTS
AT ISSUE WITH SOME OF THESE
STANDARDS THEN IF THERE ARE
DISPUTED ISSUES OF MATERIAL
FACT ABOUT THOSE STANDARDS THEN
THAT HAS TO AWAIT A FULL
EVIDENTIARY PROCEEDING WITH THE
ABILITY TO HAVE DISCOVERY AND
ALL OF THAT.

THERE IS CERTAINLY, AND I'M NOT
SUGGESTING FOR A SECOND THAT

THERE MIGHT NOT BE A MAP THAT IS SO OBVIOUS, THAT IT IS SO DEFECTIVE IN A PARTICULAR WAY THAT ONE CAN NOT HAVE ANOTHER REASON AND THEREFORE COULD INVALIDATE BUT WITH THESE MAPS AND THIS SITUATION I WOULD SUGGEST IT'S FAR FROM THAT AND MANY OF THESE STANDARDS, MOST OF THE STANDARDS APPEAR TO HAVE SUBSTANTIAL ISSUES OF DISPUTED FACT.

>> SO YOU WOULD SEE THAT THIS WOULD NOT HAVE A PRECLUSIVE EFFECT WITH REGARD TO AS APPLIED KIND OF DISPUTES THAT MAY ARISE WITH REGARD TO THESE, IS THAT WHAT I'M UNDERSTANDING YOU TO BE SAYING?

>> THAT'S CORRECT.

>> WHAT ABOUT THE INSTABILITY THAT MAY CREATE HOWEVER WITH REGARD TO OUR GOVERNING BODY? HOW DOES THAT INTERACT?

>> I THINK THERE IS AN INTERACTION AND THERE IS A BALANCING THERE AS WELL. AS THE COURT SAID IN 2002 AND STRUGGLED SINCE THE 1990s WHEN YOU HAVE FACT SPECIFIC ISSUES THAT ARE IMPORTANT THE QUESTION IS HOW CAN YOU FAIRLY ADJUDICATE THEM?

THE COURT MADE A COMMON SENSE EVALUATION THAT YOU DO A FACIAL REVIEW AND THAT A COURT OF COMPETENT JURISDICTION THEREAFTER CAN DECIDE THOSE FACT INTENSIVE BASES.

I DON'T KNOW HOW ELSE THIS COURT DOES THAT WITHOUT IT DOING EXACTLY THE SAME WAY.

>> DOESN'T THAT CREATE A REAL PROBLEM -- I APPRECIATE, FIRST OF ALL, I REALLY APPRECIATE THE WAY THE HOUSE WENT ABOUT THE

DRAWING OF THIS MAP AND I THINK THAT THERE IS, IN THE BRIEF SOME RECOGNITION OF THE IMPORTANCE OF THESE STANDARDS AND ACTUALLY ADHERING TO THE TIER 2 STANDARD.

MY CONCERN IS THAT HAVE WE IN THE PAST, WHEN WE USED THE TERM, FACIAL CHALLENGE, VERSUS AS APPLIED CHALLENGE, PERHAPS TAKEN THE TERM AS APPLIED AND EQUATED IT WITH THAT IT NEEDS A FACTUAL DEVELOPMENT AND LET'S, AND I TAKE AN EXAMPLE.

CITY OF LAKELAND WHO WILL BE ARGUING TODAY, THEY'RE CLAIMING CERTAIN PROBLEMS WITH THE MAP AS IT APPLIES TO LAKELAND BUT IS IT ANY DIFFERENT THAN WHEN WE REVIEWED THE CONTIGUITY ARGUMENT OR THE, FOR SENATE DISTRICT 27 BACK IN 2002?

IN OTHER WORDS, YES, AS APPLIED TO LAKELAND, BUT DON'T WE HAVE TO ADJUDICATE THEIR CHALLENGE THAT THE MAP AS IT PERTAINS TO LAKELAND, EITHER IS VALID OR NOT VALID?

NOW IN LAKELAND I THINK THEY ONLY ATTACKED THE SENATE.

>> RIGHT.

I RECOGNIZE THE EXAMPLE.

>> AND THE ATTORNEY GENERAL SAYS, NO, LEAVE IT ALL TILL AFTERWARDS AND TO ME THIS WOULD DEFEAT THE INTENT OF THE VOTERS SINCE 1968 AND IT'S NOT FAIR TO THE CITIZENS.

IT'S NOT FAIR TO THE POTENTIAL CANDIDATES.

AND IT DOESN'T SEEM TO BE FAIR TO THE PROCESS.

>> LET ME GO BACK AND EXPLAIN WHY I THINK THERE'S A FUNDAMENTAL DIFFERENCE BETWEEN THE NOTION OF CONTIGUITY AND

SOME OF THE OTHER NOTIONS HERE.
CONTIGUITY IS VERY MUCH
COMPUTER DRIVEN ISSUE AND ONE
REALLY DOESN'T HAVE FACTS.
THE QUESTION ONCE YOU HAVE THE
FACTS WHERE THE LINES INTERSECT
OR WHERE THEY DO NOT, THEN YOU
ASSESS AS A MATTER OF LAW
WHETHER THERE IS CONTIGUITY
IN A GIVEN DISTRICT.

>> DO YOU AGREE IF THE COURT
SAYS IT IS TOO HARD TO
FACTUALLY FIGURE IT OUT NOW,
WHATEVER IT MIGHT
BE, COMPACTNESS, POLITICAL
BOUNDARIES, AND CERTAINLY NOT
EQUAL POPULATION,
SEEMS WE CAN MEASURE THAT AND
SEEMS WE CAN MEASURE
COMPACTNESS AND ADHERENCE TO
POLITICAL BOUNDARIES THERE IS
SOME PREECLUSIVE EFFECT OF
WHAT WE SAY?

I MEAN, THE CONSTITUTION SAYS
IT IS.

IT SAYS THE DECLARATORY
JUDGMENT IS BINDING ON ALL OF
THE CITIZENS OF THE STATE.

>> YOUR HONOR, TO GO BACK FOR
40 YEARS, 40 YEARS AND TO NOW
AJUDICATE FACTUAL ISSUES WOULD
BE, AS THE COURT SAID,
IMPOSSIBLE IN 2002,
EXTRAORDINARILY IMPOSSIBLE NOW.

>> LET'S LOOK WHAT IN 2002, SO
AGAIN, WHAT I'M UNDERSTANDING
IS YOU'RE SAYING IF IT IS TOO
HARD, WE SHOULD SAY IT IS
WITHOUT PREJUDICE TO THIS BEING
AJUDICATED IN A COURT OF
COMPETENT JURISDICTION?

>> IT IS NOT THAT IT IS TOO
HARD.

IT REQUIRES FACT-FINDING AND
FULL ADJUDICATION.

>> SO LET'S TALK ABOUT, BUT

THAT, AND SO YOU WOULD SAY THAT THAT, THAT TACT WE TOOK IN 2002 WOULD BE ONE WE SHOULD TAKE IN 2012?

>> ONE HAS TO, AND HERE'S WHY, YOUR HONOR.

IN 2002 THE CONCERN WAS ABOUT HOW YOU APPLY THE FEDERAL VOTING RIGHTS ACT.

WE HAVE NOW THE FEDERAL VOTING RIGHTS ACT.

WE HAVE THE ANALOG TO THAT IN THE FLORIDA CONSTITUTION ABOUT VOTE DILUTION AND ABOUT DIMINISHMENT AND THE SECTION 5 DIMINISHMENT STANDARD IN THE VOTING RIGHTS ACT APPLIED TO FIVE COUNTIES.

WE HAVE THAT IN 67 COUNTIES.

THAT'S JUST THE FIRST TIER.

NOW OUR OPPONENTS WOULD SUGGEST THERE'S NOW AN ENTIRELY NEW TEST WITH REGARD TO WHAT IS PARTISAN PROPORTIONALITY WHICH CLEARLY IS NOT PART OF THESE STANDARDS BUT NONETHELESS, THAT IS RIFE WITH FACTUAL ISSUES.

WHEN YOU THEN GO TO THE TIER 2 STANDARDS, COMPACTNESS IS VERY MUCH AT ISSUE AND DISPUTED AS A MATTER OF FACT AMONG THE PARTIES HERE.

ADHERENCE TO POLITICAL AND GEOGRAPHIC BOUNDARIES ARE DISPUTED. THEY SAY --

>> ON THOSE, AND I UNDERSTAND. LET'S START WITH TIER 2. YOU SAY THAT IN YOUR BRIEF THAT THE PURPOSE OF COMPACTNESS EQUAL POPULATION AND ADHERENCE TO POLITICAL BOUNDARIES WAS TO PROHIBIT POLITICAL FAVORITISM BY CONSTRAINING LEGISLATIVE DISCRETION.

>> YES, YOUR HONOR.

>> AND IT LOOKS LIKE IF YOU

LOOK AT ALL THE STATES THAT
HAVE ADOPTED STANDARDS, AN
OVERWHELMING NUMBER OF THEM
HAVE COMPACTNESS AS, THAT'S THE
NUMBER ONE CRITERIA.

SO IT SEEMED TO ME THAT IN
TERMS OF LOOKING AT THIS, AND
SAYING THAT WHAT IS FACTUALLY
INTENT, IF THE HOUSE IS
CORRECT, AND WE CAN LOOK AND
SAY THE HOUSE, THE HOUSE
FOLLOWED COUNTY BOUNDARIES AND
HAS A VERY STRONG REASON WHY
THAT IS A, AN OBJECTIVE
BOUNDARY TO FOLLOW, THE
HOUSE PITS, THEIR MAP PITS
THEIR INCUMBENTS AGAINST ONE
ANOTHER.

MANY OF THEIR DISTRICTS ARE
COMPACT, CERTAINLY FAR MORE
COMPACT THAN THIS 2002,
WOULDN'T ALL OF THOSE ACTUALLY
WORK IN YOUR FAVOR TO SAY WE
HAVE BEEN ABLE TO, WE HAVE THE
SOFTWARE TO LOOK AND BOTH
MEASURE COMPACTNESS AND LOOK AT
THE LEAST COMPACT AND THE MOST
COMPACT, SEE IF THERE ARE
REASONS SUCH AS MAINTAINING
MAJORITY MINORITY DISTRICT AND
SAY THAT THOSE CRITERIA SHOW
THAT THERE WAS NO INTENT, AT
LEAST FACIALLY?

SHOULDN'T WE DO THAT, SHOULD WE
DO THAT OR NOT DO THAT AND NOT
EVEN LOOK AND SAY THAT WE CAN
FOLLOW WHAT THE HOUSE IS
SUGGESTING WE FOLLOW?

>> ALL OF THOSE CERTAINLY WORK
IN OUR FAVOR BUT THE QUESTION
IS, ARE THERE DISPUTED ISSUES
AS TO OPPONENTS OR EVEN THIS
COURT.

THIS COURT DOES NOT HAVE TO
HAVE OPPONENTS TO EVALUATE
ITSELF BUT WHAT I AM SAYING IS

IF THERE ARE DISPUTED ISSUES OF
FACT ABOUT THOSE STANDARDS,
THAT HAS TO GO THROUGH A
PROCESS --

>> WHAT IS THE DISPUTED ISSUE ABOUT
COMPACTNESS?
LET'S TALK ABOUT COMPACTNESS.
>> A PERFECT EXAMPLE.
THERE ARE PROBABLY 35 STANDARDS
AROUND THE COUNTRY FOR
COMPACTNESS.
THERE IS NO STANDARD IN FLORIDA
FOR COMPACTNESS.
AND IN FACT IN THIS AMENDMENT 5
THERE WAS NOTHING TRYING TO
DEFINE COMPACTNESS AS THERE IS
IN AT LEAST OTHER STATES.
>> ARE YOU SAYING THE COURT
SHOULDN'T DEFINE COMPACTNESS?
>> IT IS, I WOULD SUGGEST IT IS
VIRTUALLY IMPOSSIBLE TO DEFINE
COMPACTNESS IN A WAY THAT
EITHER COULD NOT BE VIOLATED OR
WILL NOT HAVE TO CHANGE AND
THAT IS BECAUSE THERE ARE
NUMERICAL ISSUES OF
COMPACTNESS,
SOME OF WHICH ARE DIRECTLY
INCONSISTENT WITH ONE ANOTHER.
AND LET ME GIVE YOU A GOOD
EXAMPLE.
THE REOCK TEST WHICH IS ONE OF
35 --

>> I WAS WONDERING HOW TO
PRONOUNCE THAT.
>> THE REOCK TEST FAVORS A
CURLED SERPENT OVER A
RECTANGLE.
IN SOME INSTANCES THAT CAN HAVE
A BEARING ON COMPACTNESS.
>> BUT DIDN'T THE HOUSE USE TWO
OF THE STANDARD MATHEMATICAL
MEASURES IN DRAWING THEIR
DISTRICTS?
>> WE HAD IN OUR DATA SET, FOUR
OR FIVE OR SIX, AND I APOLOGIZE

EXACT NUMBER, OF COMPACTNESS MEASURES THAT TOOK INTO CONSIDERATION SOME OF THOSE STANDARDS AND ALSO TOOK IN FUNCTIONAL COMPACTNESS EFFORTS SUCH AS DRIVE TIME. SUCH AS THE EASE OF TRANSPORTATION AROUND THE DISTRICT.

BUT THE LAW IS ALSO CLEAR THAT ONE DOES NOT ONLY LOOK AT NUMERICAL ELEMENTS OF COMPACTNESS.

>> BUT ARE YOU SAYING THAT THIS COURT IN INTERPRETING THE STANDARDS, THE FIRST TIME, SHOULDN'T EVEN ATTEMPT TO PUT A DEFINITION, A LEGAL DEFINITION SIMILAR TO WHAT OTHER STATES HAVE DONE, ALASKA, AND SOME OF THE OTHER STATES, ON COMPACTNESS?

WOULD IT BE EVERY TIME THAT A TRIAL JUDGE IN LEON COUNTY WOULD DEFINE IN HIS OR HER OWN WAY WHAT COMPACTNESS WAS AND WHETHER IT WAS MET FOR ONE CHALLENGE AND THEN ANOTHER JUDGE WOULD LOOK AT THE SAME MAP AND SAY WHETHER IT WAS MET FOR ANOTHER CHALLENGE?

>> YOUR HONOR, THAT TO ME IS CLASSIC INCREMENTAL ADJUDICATION OF AN ISSUE THAT THE VOTERS DID NOT VOTE ON AND THAT IS A PARTICULAR ISSUE OF WHAT COMPACTNESS IS AND INDEED, THIS COURT CAN REVIEW THESE MAPS AND DETERMINE FACIALLY WHETHER THERE'S ISSUES OF COMPACTNESS OR NOT IN A FACTUAL PROCEEDING AND APPELLATE PROCEEDING THEREAFTER LIKE THIS COURT DOES --

>> I'M SORRY.

>> ISN'T IT ALSO THE CASE THAT

COMPACTNESS CAN NOT BE VIEWED
IN ISOLATION?

>> OH, ABSOLUTELY.

>> THAT COMPACTNESS IS ONE
STANDARD.

THERE ARE SOME OTHER STANDARDS
THAT ARE SUPERIOR TO THAT AND
THEN THERE ARE OTHER STANDARDS
THAT ARE ON A PAR WITH IT?

SO IT IS ALL PART OF, AS I
THINK YOU SAID AT THE
BEGINNING, OF A MATRIX THAT THE
LEGISLATURE HAS BEEN GIVEN TO
DEAL WITH.

BUT NOW THIS BUSINESS ABOUT
DEFINING COMPACTNESS, ISN'T
COMPACTNESS IN THIS CONTEXT AN
INHERENTLY VAGUE TERM?

I MEAN, TO BE PERFECT FOR A
GEOMETRICAL PACT I THINK THAT
IS A CIRCLE.

>> UNDER SOME TESTS.

>> ONE UNDERSTANDING OF IT
WOULD BE A CIRCLE.

OBVIOUSLY WE CAN'T HAVE
DISTRICTS THAT ARE ALL
CIRCULAR.

UNDER ALL THESE DIFFERENT
MATHEMATICAL TESTS THAT VARY,
WE HAVE GOT DIFFERENT WAYS OF
APPROACHING IT BUT SEEMS TO ME
THAT ALL OF THAT ENDS UP WITH A
CONCLUSION THAT IT IS A VAGUE
TERM IN THIS CONTEXT AND THAT,
AND WHEN WE LOOK AT WHAT THE
APPROPRIATE STANDARD TO REVIEW
IS IT SEEMS TO ME THAT THAT'S
WHERE YOUR ARGUMENT ABOUT
DEFERENCE TO THE LEGISLATURE
WOULD COME IN.

BECAUSE IF THERE IS A VAGUE
TERM ON WHAT BASIS DO WE HAVE,
DO WE SUBSTITUTE OUR JUDGEMENT
FOR THE JUDGMENT THAT HAS BEEN
MADE BY THE LEGISLATURE?

>> AND EVEN MORE, YOUR HONOR,

UNDER TIER 1 AND TIER 2, TIER 3 EXPRESSLY STATES, NONE OF THESE STANDARDS TAKE PRECEDENCE OVER THE OTHER IN THAT TIER.

IT IS A CHALLENGING BALANCING OF THOSE STANDARDS.

ONE WAY TO TRY TO ASSESS THE VAGUENESS OF COMPACTNESS IS WHAT THE HOUSE DID AND THAT IS, TO LOOK AT COUNTIES, AS BOUNDARIES, FOLLOW COUNTIES TO THE EXTENT POSSIBLE AND ALSO BECAUSE COUNTIES HAVE WORD SEARCH OF ALL THE TESTIMONY IN THE PUBLIC HEARINGS, THE WORD COUNTY COMES UP MORE THAN ANY OTHER BY FAR.

>> BUT THE CONSTITUTION DOESN'T REQUIRE YOU TO --

>> ABSOLUTELY NOT.

>> TO PRIVILEGE COUNTY LINES OVER OTHER GEOGRAPHICAL BOUNDARIES OR MUNICIPAL BOUNDARIES OR WHATEVER.

>> ONE CAN FOCUS ON CITIES AND RATHER THAN COUNTIES.

ONE CAN FOCUS ON COMPACTNESS IN WHATEVER NUMBER OF DIFFERENT STANDARDS THERE MIGHT BE AND SACRIFICE COUNTY AND CITY BOUNDARIES TO SOME EXTENT.

THAT GOES TO THE VERY NOTION THAT THIS IS AN INCREDIBLY DIFFICULT BALANCING OF STANDARDS, THAT TAKES THOUSANDS OF HOURS TO DO.

AND THE REAL QUESTION IS, IF THE LEGISLATURE, IF THE HOUSE, IS SHOWING A GOOD-FAITH EFFORT TO COMPLY WITH THOSE STANDARDS AND TO BALANCE ONE OFF OF THE OTHER, THEN THAT IS, THAT IS THE DEFERENCE THAT THE COURT MUST GIVE.

>> IN THE HOUSE PLAN AS I UNDERSTAND IT DID YOU,

ATTEMPTED TO ADHERE TO COUNTY BOUNDARIES AND TO NOT HAVE A, AN OVERWHELMING NUMBER OF COUNTIES IN ANY ONE DISTRICT?

>> THAT WAS A FOCUS OF THE HOUSE FOR ANY NUMBER OF REASONS, ONE OF WHICH BECAUSE OF THE POPULATION OF A, IDEAL POPULATION OF A HOUSE DISTRICT AND THE NOTION WAS WE DO HAVE, WE HAVE A VAGUE STANDARD OF COMPACTNESS.

WE HAVE NUMEROUS WAYS IT'S BEEN DEFINED.

SO WHERE DO WE START?

WE AT LEAST START WITH COUNTIES.

>> SO UNDER YOUR ARGUMENT SEEMS TO ME WE WOULD HAVE TO ACCEPT WHATEVER DEFINITION OF COMPACTNESS THAT THE HOUSE OR THE SENATE WANTED TO USE.

IS THAT BASICALLY --

>> NO, YOUR HONOR.

IT IS A, IT IS A TRULY A FACT-SPECIFIC INQUIRY, ASSUMING THERE ARE DISPUTED ISSUES OF FACT, ABOUT WHAT ARE THE STANDARDS THAT ARE EMPLOYED, DO THEY MAKE SENSE IN FLORIDA.

LET ME GIVE YOU AN EXAMPLE.

THE REOCK TEST AS WE'RE TALKING ABOUT, THAT FOCUSES ON CIRCLES.

THAT IS PARTICULARLY INAPPROPRIATE FOR A LONGITUDINAL AND HORIZONTAL STATE LIKE FLORIDA WHERE YOU HAVE PATTERNS THAT GO NORTH-SOUTH OR EAST-WEST.

CIRCLES DON'T WORK VERY WELL.

OTHER STANDARDS WORK PROBABLY BETTER IN FLORIDA BUT AGAIN

THOSE NUMERICAL ONES ALSO HAVE TO TAKE INTO CONSIDERATION THE TRADEOFF TO A COUNTY, THE TRADEOFF TO A CITY.

SOME CITIES ARE VERY
NONCOMPACT.

>> CAN WE TELL, YOU ACTUALLY
SAID SOMETHING THAT I THINK WAS
IMPORTANT, GOOD-FAITH EFFORT.
AND CAN'T WE BECAUSE OF THE WAY
THE HOUSE WENT ABOUT IT AND
WHAT THEY HAVE STATED AS, AND
THIS IS A FRIENDLY QUESTION. SO,
CAN'T WE --

>> I'LL BE THE JUDGE OF THAT.

[LAUGHTER]

>> CAN'T WE --

>> BEWARE OF THE TRAPS.

>> CAN'T WE JUDGE THAT THOSE
WERE GOOD FAITH DECISIONS, THAT
THEY WERE CONSISTENT DECISIONS
AS FAR AS ADHERING TO COUNTY
LINES?

THAT, AND AGAIN, WHAT MY
CONCERN IS IS NOT THAT, IS
THIS IDEA THAT, WHICH IS IN THE
SENATE'S BRIEF,
WE HAVE BEEN GIVEN A
SISYPHEAN TASK WHICH IS
IMPOSSIBLE TASK, PROBABLY
IMPOSSIBLE FOR A FACT-FINDER
BECAUSE WHAT YOU'RE SAYING
THERE IS A, SUCH A GREAT MEASURE
OF DEFERENCE THAT REALLY WHY
WE WOULD SAID NO, SHOULD HAVE BEEN
THE CITY BOUNDARY AND YOU
PICKED THE COUNTY AND THAT'S A
GOOD FAITH DECISION, WHY SHOULD
THAT EVEN BE SECOND-GUESSED IN
A CHALLENGE IN A TRIAL COURT?

>> IN COMPLYING WITH THE
STANDARDS THERE COULD BE ISSUES
WHETHER THE COMPLIANCE IS
PRETEXTUAL AND WHETHER OR NOT
THERE REALLY IS COMPLIANCE.

>> THAT LEADS ME TO THIS
QUESTION AND HAS TO DO WITH PERRY
THURSTON.

THERE IS AN ALLEGATION FOR HIS
DISTRICT THE INTENT WAS TO DRAW

IT ONE BLOCK NORTH OF HIS HOME.
THAT THERE IS NOTHING IN THIS
RECORD THAT THAT'S TRUE, THAT
HAPPENED BUT ALSO THE HOUSE
FOLLOWED A MAJOR STATE ROAD AND
THE DISTRICTS IN THAT AREA ARE
FAR MORE COMPACT THAN THEY WERE
IN 2002.

SO WOULD YOU SAY THAT THAT, IF
WE SAY ON ITS FACE THOSE
DISTRICTS ARE, THEY MEET THE
TIER 2 CRITERIA AND THERE IS NO
EVIDENCE THAT THERE WAS A
PRETEXT, COULD PERRY THURSTON
BRING A CHALLENGE SUBSEQUENTLY
SAYING THERE WAS A PRETEXT AND
SHOW THAT MAYBE THERE WAS SOME
BACKGROUND DISCUSSIONS THAT WHY
HE WAS GETTING, YOU KNOW,
SQUEEZED OUT OF HIS DISTRICT?

>> UNDER THE PROPONENTS OF, THE
OPPONENTS VIEW RESULTS EQUAL
INTENT WHICH OBVIOUSLY THEY DO
NOT AND LET ME --

>> I UNDERSTAND WHAT YOU'RE
SAYING.

I DON'T AGREE CAN EQUAL INTENT.
I'M ASKING YOU THAT QUESTION
WHICH IS IF THERE IS A LOGICAL
REASON FOR THAT DISTRICT THAT
APPEARS TO BE VALID BUT WE
DON'T, WE CAN NOT SAY THERE IS
IMPROPER INTENT, DOES PERRY
THURSTON GET TO CHALLENGE HIS,
THAT DRAWING OF THAT
DISTRICT IN A SUBSEQUENT
LITIGATION IN THE TRIAL COURT?

>> IN PART IT DEPENDS ON WHAT
THIS COURT SAYS THE STANDARDS
MEAN BECAUSE IF IN FACT THE
RESULT IS EVIDENCE OF INTENT,
INTENT, AND OBVIOUSLY INTENT
IS A FACT-SPECIFIC ISSUE
DEPENDING ON HOW THE COURT
DECIDES IT.

AND LET ME JUST TALK ABOUT

PERRY THURSTON A MINUTE.
THE LEAGUE OF WOMEN VOTERS MAPS
TAKES PERRY THURSTON OUT OF A
MAJORITY MINORITY DISTRICT.
THE NOTION THAT WE DISFAVORED
HIM IS DEMONSTRABLY FALSE.
IF THERE IS NOT ISSUES OF FACT,
IF PERRY THURSTON DID NOT RAISE
THE ISSUES AND THOSE ISSUES
WERE NOT RAISED THAT WOULD BE
ONE THING.
EVERY STEP OF THE WAY, YOUR
HONOR --
>> CAN HE BRING IT OR NOT BRING
IT?
>> BECAUSE THERE IS A, BECAUSE
THE ISSUE IS WHETHER THERE IS
INTENT WITH THAT, PRESUMABLY HE
COULD AND I DON'T LIKE THAT ON
BEHALF OF THE HOUSE BUT I LIKE
THAT MUCH BETTER THAN THE
NOTION THAT VERY COMPLEX FACTS
CAN BE AJUDICATED IN A
PROCEEDING THAT THIS COURT HAS
SAID IS IMPOSSIBLE AND IS DEED
IMPOSSIBLE.
>> WHY DOES IT HAVE TO BE THE
ONE OR THE OTHER REALLY?
THE CONSTITUTION SAYS A
JUDGEMENT OF THE SUPREME COURT
OF THE STATE DETERMINING THE
APPORTIONMENT BE VALID SHALL BE
BINDING ON ALL THE CITIZENS OF
THE STATE.
VARIOUS THINGS SAID ABOUT THAT
WHY THAT DOESN'T MEAN EXACTLY
WHAT THAT SAYS BUT THAT SOUND
PRETTY BROAD AND SO I, BUT,
THE, WHY IS IT THE REALITY HERE
IS THAT WE CAN'T AJUDICATE
FACT-INTENSIVE QUESTIONS
BECAUSE THIS IS NOT A PROCEEDING
IN WHICH THERE HAVE BEEN, THERE
HAS BEEN ANY EVIDENTIARY
HEARING?
THIS IS ESSENTIALLY, IN THE

NATURE OF AN APPELLATE REVIEW
PROCEEDING.

WE DON'T MAKE DETERMINATIONS
ABOUT FACTS IN AN APPELLATE
REVIEW PROCEEDING.

NOW IF THERE IS SOMETHING, IF
THERE ARE UNDISPUTED FACTS THAT
ON THE FACE OF THE RECORD AND
YOU APPLY SOME KIND OF LEGAL
ANALYSIS TO REACH A CONCLUSION,
THAT'S A DIFFERENT THING.

BUT TO THE EXTENT, FOR INSTANCE
ON RETROGRESSION, HOW COULD WE
SECOND-GUESS THE LEGISLATURE'S
ANALYSIS OF RETROGRESSION WHICH
IN THE FEDERAL CASE LAW IS
ACKNOWLEDGED TO BE FACT
INTENSIVE BASED ON SOMETHING IN
THE RECORD HERE WITHOUT HAVING
AN OPPORTUNITY TO HAVE
ADVERSARIAL INTERESTS TEST
VARIOUS THINGS WITH RESPECT TO
THAT?

>> IT'S ABSOLUTELY, ABSOLUTELY
IMPOSSIBLE, YOUR HONOR, AND I
WOULD SUGGEST THAT IF THIS
COURT IN 2009 IN ITS ADVISORY
OPINION BELIEVED THAT WHAT WAS
IMPOSSIBLE IN 2002 HAS BECOME
POSSIBLE IN 2012, THE VOTERS
WOULD HAVE HAD THE RIGHT TO
KNOW THAT.

AND THE VOTERS WOULD HAVE HAD
THE RIGHT TO KNOW THAT A
APPELLATE COURT IS SOMEHOW
ASSUMING A FACT-FINDING
FUNCTION ABOUT SOME OF THE MOST
COMPLEX ISSUES OF THE LAW.

>> WOULD YOU GO BACK TO THE
CONCEPT, I'M SOMEWHAT TROUBLED,
I WANT TO MAKE SURE I
UNDERSTAND THIS, THAT THE COURT
SHOULD NOT ATTEMPT TO PLACE ANY
TYPE OF PARAMETERS THROUGH
WORDS IN AN ATTEMPT ON,
IN THE CONSTITUTION

WITH REGARD TO COMPACTNESS.
ALL OF OUR CORE DOCUMENTS
CONTAIN PRINCIPLED WORDS,
UNREASONABLE, EQUAL PROTECTION,
YOU CAN JUST NAME THEM FOREVER
AND IT SEEMS TO ME THAT COURTS
SOMEWHERE HAVE TO PLACE
PARAMETERS.

ARE YOU SUGGESTING THAT UNLESS
YOU CAN HAVE SCIENTIFIC
ABSOLUTE CERTAINTY, THAT COURTS
OUGHT NOT EVEN DEAL WITH A
GENERAL PARAMETER DISCUSSION OF
WHAT THAT IS?

I'M TRYING, HELP ME UNDERSTAND.

>> NO, YOUR HONOR, I APOLOGIZE
IF I SUGGESTED THAT.

>> I DON'T KNOW THAT YOU DID.
I'M TRYING TO UNDERSTAND.

>> RIGHT.

IN AN ADJUDICATION, A
FACT-SPECIFIC ADJUDICATION WHAT
IS COMPACTNESS IN THIS CONTEXT
CERTAINLY THIS COURT HAS THE
RIGHT TO LOOK AT DIFFERENT
STANDARDS AND TO TRY TO DEVELOP
THE LAW IN A WAY CONSISTENT
WITH THE VOTERS INTENT BUT
BECAUSE IT IS SO VAGUE, BECAUSE
THE VOTERS DID NOT AND THE
FRAMERS DID NOT CHOOSE TO
DEFINE IT IN ONE OF THE MULTI,
YOU KNOW, MULTIVARIOUS WAYS,
THAT IT HAS BEEN DEFINED, IT
NEEDS TO BE ON AN INCREMENTAL
BASIS AND THE REALITY IS THIS
IS NOT A PROCESS THAT HAPPENS
EVERY DAY BUT THERE CAN BE
PARAMETERS SET THAT WILL GUIDE IN
THE FUTURE BUT HAS TO BE BASED
ON FACTS ON THE GROUND I
SUGGEST.

>> YOU MENTIONED SOMETHING
ABOUT RETROGRESSION.
YOU SAID YOU WERE ABLE TO LOOK
AT HOW THE COALITION REDREW ITS

DISTRICT AND DEFEATED THE MAJORITY MINORITY COMPOSITION. YOU WERE ABLE TO DO THAT BY TAKING YOUR THE HOUSE SOFTWARE PROGRAM AND TO THE MAP, TAKE THE STATISTICS THAT HAVE BEEN THE HOUSE DATA, THE POLITICAL DATA, AND DETERMINE THAT. AND CERTAINLY, AND I UNDERSTAND WHERE YOU TALK ABOUT THINGS BEING VERY FACTUALLY INTENSE BUT IT IS NOT AT ALL A SISYPEHAN INTENT TO LOOK AT DISTRICTS SEE IF ON THEIR FACE THAT THEY RETROGRESS.

PUT A MINORITY MAJORITY DISTRICT AND PUT IT BELOW 50%. ARE YOU SUGGESTING THAT WE CAN'T LOOK AND DETERMINE THAT? >> YOUR HONOR, I ABSOLUTELY AM BECAUSE THE NOTION THAT ONE CAN PLUG IN NUMBERS AND DETERMINE RETROGRESSION OR NOT IS SIMPLY NOT ACCURATE.

THE HOUSE CERTAINLY -- >> I THOUGHT YOU SAID IT HAD RETROGRESSED AND IT WOULD BEING IMPERMISSIBLE?

>> IN CERTAIN AREAS, LET ME GIVE YOU THREE EXAMPLES. IN CERTAIN AREAS IN THE LEAGUE MAP THERE ARE THREE DISTRICTS, 20, 26 AND 92, WHERE THERE ARE EXISTING AFRICAN-AMERICANS ELECTED AND SERVING THOSE COMMUNITIES.

ON THE FACE OF THE MAP THOSE DISTRICTS GO FROM ONES THAT PERFORMED DOWN TO 12%, 14%, 16%.

ONE CAN ASSUME, BUT LET ME SAY --

>> YOU CAN TELL THAT? >> WE BELIEVE THAT IS A DIMINISHMENT. THEY DO NOT. >> BUT IF WE LOOK AND SAY THAT

WE TAKE THE FEDERAL VOTING RIGHTS ACT AND SAY THAT UNDER THAT IT IS PRETTY CLEAR THAT GOING FROM OVER 50% TO UNDER POST-2006 IS RETROGRESSION.

>> IT IS INCREDIBLY COMPLEX. THEY WILL SAY AT 14%, PERHAPS THEY CAN WIN A DEMOCRATIC PRIMARY.

THEY MIGHT SAY THAT THE MINORITY IS A CANDIDATE OF CHOICE OF WHITE VOTERS. YOU HAVE TO LOOK AT RACIAL POLARIZATION AND THE EXTENT THAT THERE IS RACIAL POLARIZATION IN THE AFRICAN-AMERICAN COMMUNITY AND WHETHER THERE IS WHITE-BLACK VOTING IN THE WHITE COMMUNITY AND THEY WILL VIGOROUSLY CONTEND THAT THAT IS NOT THE CASE.

AND WE CAN SAY IT AND WE CAN ASSESS IT AND WE HAVE ASSESSED IT BUT OUR ASSESSMENT WILL BE VIEWED TO BE INCORRECT BY THE OTHER SIDE AND --

>> LET ME ASK YOU ONE OTHER QUESTION.

I KNOW YOU'RE JUST OUT OF TIME HERE BUT I'M INTERESTED IN INCUMBENT PROTECTION ISSUE. AS I LOOKED AT THE HOUSE MAP, IT SEEMS TO ME THAT YOU HAVE A LOT OF DISTRICTS THAT ARE DEMOCRATIC DISTRICTS THAT ARE NOW OVERLAPPING DISTRICTS AND NOT SO MUCH ON THE REPUBLICAN SIDE.

SO CAN WE LOOK AT THAT, THE FACT THAT YOU HAVE ALL OF THESE OVERLAPPED, WELL, INCUMBENTS ARE NOW IN OVERLAPPING DISTRICTS? IS THAT --

>> PERRY YOU MEAN?

TWO INCUMBENTS IN ONE DISTRICT.

>> WHICH OVERLAPS ALAN WILLIAMS AND MICHELLE VASILINDA, THOSE KINDS OF THING, CAN WE LOOK AT THAT TO DETERMINE WHETHER OR NOT THERE IS SOME INCUMBENT PROTECTION HERE SINCE, WELL, ACTUALLY POLITICAL PARTY PROTECTION, SINCE, NOT SO MUCH ON THE REPUBLICAN SIDE BUT THERE ARE A NUMBER ABOUT OF DEMOCRATIC DISTRICTS LIKE THAT?

>> ONE CAN LOOK AT IT, YOUR HONOR, BUT FOR A NUMBER OF REASONS IT PROVES ABSOLUTELY NOTHING WITH REGARD TO THE HOUSE MAP. YOU ASKED FOR INCUMBENCY ADDRESSES, YOU THE COURT, ASKED FOR INCUMBENCY ADDRESSES OF BOTH PARTIES, TO SUPPORT WHAT THEY, WHAT THEY ASSERT. THEY CAME BACK TO YOU AND BROUGHT ONE REPUBLICAN SAYING, WILL WEATHERFORD WAS FAVORED AS A REPUBLICAN LEGISLATOR. THEY MENTIONED NO OTHER REPUBLICAN LEGISLATOR AS FAVORED. THEY LISTED 10 DISFAVORED DEMOCRATS.

>> [INAUDIBLE].

>> RIGHT.

BUT 10 DISFAVORED DEMOCRATS IS MEANINGLESS DEPENDING HOW MANY DISFAVORED REPUBLICANS ARE, AND THE INEVITABLE RESULT THAT WHEN YOU APPLY THESE STANDARDS, PEOPLE WILL BE PAIRED WHETHER ONE LIKES IT OR NOT.

I CAN TELL YOU THAT THE, GIVEN THE CORRECT EVIDENTARY PROCEEDINGS, THERE ARE, WE WILL SHOW THAT SIX OF THE 10 CHAIRS AND VICE CHAIRS OF THE REDISTRICTING COMMITTEES ARE PAIRED AGAINST THEMSELVES. SIX, SIX OF 11 OR SIX OF 10?

SIX OF 10 REPUBLICAN HISPANICS
IN DADE COUNTY ARE PAIRED
AGAINST THE OTHER.

NOT FUN AND NOT INDICATIVE OF
ANY POLITICAL FAVORISM.

AND WITH THAT, IF I MAY.

>> MR. ^CHIEF JUSTICE, MAY IT
PLEASE THE COURT.

MICHAEL CARVIN FOR THE
SENATE.

TO PLUNGE IN COUPLE QUESTIONS.
YOU WILL NOT BE ABLE TO RESOLVE
THESE FACT INTENSIVE QUESTIONS
IN THIS PROCEEDING.

THE JUDGE ASKED SHOULD WE
PROVIDE SOME LEGAL DEFINITIONS?

I HAVE TWO POINTS, IF YOU'RE
TRYING TO FIND THE TIER 2
STANDARD THAT WOULD BE QUITE
COUNTERPRODUCTIVE BECAUSE FOR
EXAMPLE YOUR DEFINITION OF
COMPACTNESS WOULD NOT APPLY TO
THE MINORITY VOTING RIGHTS
WHICH IS A TIER 1 STANDARD.

OR JUSTICE PARIENTE, YOU USED
EXAMPLE OF THE CITY OF
LAKELAND.

IT IS AN OBVIOUS ABSOLUTE
CONFLICT.

IF YOU LOOK AT PAGE TWO OF
THEIR BRIEF, YOU WILL SEE THE
CITY OF LAKELAND FOR WHATEVER
REASON IS EXTREMELY NONCOMPACT.

YOU HAVE A AN ABSOLUTE CONFLICT
ADHERING TO COMPACTNESS AND
ADHERING TO CITY BOUNDARIES.

WHAT THAT HAS TO BE DONE IS
A RECONCILING PROCESS WHERE THE
LEGISLATURE IS GIVEN THE
AUTHORITY EXPRESSLY UNDER
AMENDMENT 5 TO RECONCILE THESE
THINGS.

IF YOU TRY AND ESTABLISH SOME
FAKE PRIORITY OR SOME
HANDCUFFS, THAT WILL BE BINDING
IN ALL CIRCUMSTANCES, I SUGGEST

WOULD COME BACK TO BITE YOU AND
THE KEY --

>> I'M CONCERNED YOU USED WORD
FAKE, USED SOME FAKE
BOUNDARIES.

AS I UNDERSTOOD THE CITY OF
LAKELAND AS A PART OF LAKELAND
IS JOINED IN WITH ALMOST
COASTAL AREAS.

HAS NOTHING TO DO WITH
COMPACTNESS WITH CITY ITSELF,
DOES IT?

>> YES, IF WE ADHERE TO THE
CITY OF LAKELAND'S BORDER, IN
FACT IF YOU LOOK AT THE COALITION --

>> NOT THE CITY'S BORDER BUT
PUTTING WITHIN ONE DISTRICT.

AS I UNDERSTAND THE DISCUSSION
IT IS NOT THAT IT HAS TO BE A
DISTRICT IN AND OF ITSELF.

I MEAN, I'M MISSING THIS
ARGUMENT.

>> I MAY BE MISUNDERSTANDING
THEIR ARGUMENT.

I THOUGHT THEIR ARGUMENT WAS
THE CITY OF LAKELAND'S
BOUNDARIES NEED TO BE PRESERVED
IN THEIR ENTIRETY.

AND IF YOU DO THAT, IF YOU LOOK
WHAT HAPPENS WHEN YOU DO THAT
LOOK AT COALITION MAP FOR DISTRICT
10. THAT EXTRAORDINARILY UGLY
PROTUBERANCE IS THE
CITY OF LAKELAND.

IT WOULD MAKE A LESS COMPACT
DISTRICT IF YOU PRESERVE THEIR
POINT.

IF THEY ARE ARGUING THEY
SHOULDN'T HAVE BEEN PUT IN WITH
A COASTAL COMMUNITY, THAT IS
COMMUNITY OF INTEREST ARGUMENT
WHICH IS NOT IN, AS YOU KNOW A
STANDARD UNDER AMENDMENT 5.

SO I WAS JUST TRYING TO MAKE
THE POINT THESE ARE INHERENTLY
INTENTION, AND KEY POINT I

THINK HERE IS ALL OF THE ACCUSATIONS ABOUT OUR PLAN FROM PERRY, FROM INCUMBENCY PROTECTION TO COMPACTNESS TO MUNICIPAL BOUNDARIES STEM FROM OUR DECISIONS ON THE MINORITY VOTING RIGHTS.

IF I CAN GIVE YOU THREE ILLUSTRATIVE EXAMPLES I THINK IT WILL MAKE IT ENTIRELY CLEAR WHY THEIR APPROACH JUST DOESN'T MAKE ANY SENSE.

IN THE NORTHEAST DISTRICT THAT RUNS FROM JACKSONVILLE THROUGH ST. AUGUSTINE WE MAINTAIN THE DISTRICT THAT AT AROUND 47% BLACK VOTING AGE POPULATION. NOW THEY KEPT THAT ENTIRE DISTRICT IN DUVAL COUNTY.

BUT THE CONSEQUENCE OF THAT WAS TO REDUCE THE MINORITY VOTING AGE POPULATION ROUGHLY 42%. IN THE FACE OF A FEDERAL DISTRICT COURT THREE-JUDGE FINDING THAT BLACKS CAN NOT ELECT CANDIDATES OF CHOICE UNLESS THEY'RE A MERE MAJORITY.

SO THEY REDUCED IT TO A VERY DANGEROUS LEVEL AND THEY HAVE DONE IT IN A WAY THAT OBVIOUSLY WE THINK DIMINISHES THE ABILITY TO ELECT.

AND WHAT WAS THE PURPOSE OF THIS?

WAS IT, SOMETIMES YOU CAN DIMINISH MINORITY VOTING POPULATION IF YOU WANT TO REDISTRICT IT ELSEWHERE BUT WHERE WERE THE OTHER BLACK COMMUNITIES THAT WERE CONTAINED, THAT ARE CONTAINED IN OUR DISTRICT PUT IN THEIR DISTRICTS?

THE DAYTONA COMMUNITY WAS PUT INTO DISTRICT 7.

10% BLACK COMMUNITY.

OBVIOUSLY THEY WOULD BE
DEPRIVED OF ALL INFLUENCE OR
ALL ABILITY TO ELECT.

THE ST. AUGUSTINE PALATKA BLACK
COMMUNITY WAS PUT INTO DISTRICT
8. 9.2% BLACKS.

MY POINT BEING THAT YOU HAVE
NOW DIMINISHED THE ABILITY OF
THESE IDENTIFIABLE DISTRICTS AS
WELL AS THE BLACK COMMUNITY, WE
DIDN'T DO THAT AND IT DID COME
AT THE COST OF COUNTY
BOUNDARIES AND COMPACTNESS.

>> I THOUGHT THEIR ARGUMENT WAS
BASICALLY IF YOU HAVE, YOU
CHANGED THAT DISTRICT 6 TO A
BASICALLY DUVAL COUNTY DISTRICT
THAT, AND BY PUTTING THESE
OTHER FOUR COUNTIES BECAUSE
THAT DISTRICT IS NOT ONLY DUVAL
COUNTY, DOES FLAGLER, ST.

JOHNS, VOLUSIA AND PUTNAM
COUNTY, THAT YOU HAVE NOW TAKEN
THESE PEOPLE IN THESE OTHER
AREAS AND THEY NOW HAVE NO
INFLUENCE IN THESE OTHER
DISTRICTS THAT HAVE BEEN
CREATED?

>> THAT IS THEIR ALLEGATION AND
THE FACTS WILL PROVE THAT IS
DEMONONSTRABLY FALSE.

HOW HAVE THEY ENHANCED THE
INTEREST OF THE MINORITIES IN
THESE OTHER COMMUNITIES?

THAT'S MY POINT.

THEY PUT THEM IN DISTRICT 7
WHICH IS 10% BLACK.

THEY HAVE ABSOLUTELY NO CHANCE
OF --.

>> YOU SAID THE FACTS
DEMONSTRATE IT'S FALSE.

>> RIGHT.

>> BUT YOU'RE SAYING WE CAN'T
ASCERTAIN FACTS?

>> THAT IS WHY I'M HERE, TO
TELL YOU IF THIS COURT EMBARKS

ON THE TREACHEROUS COURSE OF TRYING TO DECIDE WHAT ARE ADMITTEDLY COMPLICATED ISSUES WHAT CONSTITUTES RETROGRESSION AND HOW THAT INTERACTS WITH COMPACTNESS AND COUNTY LINE, I DON'T THINK YOU CAN HELP BUT PRODUCE FALSE-POSITIVES. EITHER FOR THE SENATE OR FOR THE OPPONENTS BECAUSE -- I'M SORRY.

>> SEEMS TO ME THEN, WHAT IT COMES DOWN TO THIS DEFERENCE THAT, YOU KNOW, COUNSEL FOR THE HOUSE TALKED ABOUT AND NOW YOUR ARGUMENT THAT THERE REALLY IS, WHAT IS THE POINT OF THE SUPREME COURT REVIEW?

JUST SEEMS TO ME THAT WHAT WE HAVE HERE IS AN ARGUMENT THAT SAYS, WE ACCEPT WHAT THE HOUSE AND THE SENATE HAS DONE HERE AND THAT'S IT?

WE CAN'T DEFINE THE STANDARDS. WE CAN'T MAKE ANY FACTS. WHAT ARE WE SUPPOSED TO DO?

>> TWO POINTS, YOUR HONOR. ONE IS WE'RE NOT ASKING FOR ANY RES JUDICATA OR COLLATERAL ESTOPPEL ON DISPUTED FACTS AS I THINK MY CO-COUNSEL MADE CLEAR AND JUSTICE LEWIS MADE CLEAR IN HIS CONCERNS IN THE LAST, WHAT WAS LOGIC OF WHAT THEY DID IN THE LATE '60s IN THE CONSTITUTIONAL AMENDMENT.

THIS IS ABOUT EQUAL POPULATION AND THINGS THAT ARE READILY DISCERNABLE.

WE KNOW THE POPULATION AND WHETHER DISTRICTS CONNECT. EQUAL POPULATION AND CONTIGUITY IS KIND OF THING YOU CONTEMPLATED YOU DID IN 30 DAYS.

NO RATIONAL PERSON COULD EXPECT SEVEN APPELLATE COURT JUSTICES TO RESOLVE THESE EXTRAORDINARILY TOUGH FACTUAL ISSUES WHICH POLITICAL FAVORITISM BEDEVILED FEDERAL COURTS FOR 25 YEARS.

VOTING RIGHTS ACT LITIGATION FILLS VOLUMES. WHAT YOU'RE SUPPOSED TO FIGURE OUT AND WHAT IN TERMS CONSTITUTES RACIAL BLACK VOTING AND RETROGRESSION AND YOU HAVE TO ININTERACT WITH ALL THE TIER 2 STANDARDS ADMITTEDLY NEW AND QUITE DIFFERENT.

I DON'T THINK ANY STATE UTILIZED POLITICAL AND GEOGRAPHIC BOUNDARIES ANALYSIS. PRESERVE BOUNDARIES OF POLITICAL BOUNDARIES, NOT GEOGRAPHICAL.

I UNDERSTAND THE TEMPTATION THAT --

>> YOU SAY OTHER STATES HAVE, THEY EITHER REQUIRE COUNTIES OR THINK, I MEAN THERE'S A LOT OF STATES THAT HAVE THOSE TYPES OF PROVISIONS IN THEIR CONSTITUTION.

>> BUT QUITE DIFFERENT FROM THIS ONE AND THAT'S THE KEY POINT IN ALL OF THOSE OTHER STATE CONSTITUTIONS. THEY SAY PRESERVE POLITICAL BOUNDARIES OR RESPECT POLITICAL BOUNDARIES.

INDEED THAT WAS THE LANGUAGE OF THE LEAGUE OF WOMEN VOTERS OFFERED UP TO THIS COURT IN 2002 BUT THEY CHANGED IT IN AMENDMENT 5 FROM RESPECT OR PRESERVE POLITICAL BOUNDARIES TO UTILIZE POLITICAL AND GEOGRAPHICAL BOUNDARIES.

SO TO UTILIZE IS NOT TO PRESERVE AT ALL COSTS.

IT IS TO USE THEM WHERE IT
MAKES SENSE AND GEOGRAPHICAL
GIVES THE LEGISLATURE A CHOICE
BETWEEN RESPECTING POLITICAL
BOUNDARIES OR GEOGRAPHICAL
BOUNDARIES.

>> I ASKED ABOUT THE TIER 2
STANDARDS.

LET'S TRY TO GET A LITTLE
DEFINITION HERE BECAUSE I HOPE
YOU DON'T THINK WE'LL COME OUT
OF THIS OPINION WHATEVER WAY WE
GO AND JUST SAY, WE CAN'T,
WE'RE NOT GOING TO PUT ANY
DEFINITION ON THE STANDARDS AND
WE'RE NOT, WE'RE JUST GOING TO
THROW UP OUR HANDS.

THE TIER 2 STANDARDS HAVE BEEN
RECOGNIZED AND THE HOUSE SAYS
IT, AS THE PURPOSE BEING TO
PROHIBIT POLITICAL FAVORITISM
BY CONSTRAINING LEGISLATIVE
DISCRETION.

THAT'S WHAT THE HOUSE SAYS.
DO YOU AGREE OR DISAGREE WITH
THE HOUSE'S POSITION AND THE
POSITION OF WHAT WAS STATED IN
BROWN VERSUS SECRETARY OF STATE
FROM THE 11th CIRCUIT THAT
THESE TIER 2 STANDARDS ARE
THERE ACTUALLY TO CONSTRAIN
LEGISLATIVE DISCRETION SO THAT
FAVORITISM FOR A POLITICAL
PARTY AND AN INCUMBENT IS, THAT
THAT IS EITHER PROHIBITED OR
THE CHANCE OF IT IS LESSENER?

>> I HAVE THREE RESPONSES, YOUR
HONOR.

IN THE FIRST PLACE I THINK THAT
IS ONE OF THE PURPOSES BUT NOT
ALL THE PURPOSES.

MAIN PURPOSE OF COMPACTNESS AND
MAINTAINING POLITICAL AND
GEOGRAPHICAL BOUNDARIES IS
EFFECTIVE REPRESENTATION.

I.E., PEOPLE HAVE A COMMUNITY OF

ORGANIZED POLICY.

THEY CAN GO AND ADVOCATE TO THEIR SENATOR IN THIS CASE A UNITED FRONT BUT THAT COULD BE FROM FOLLOWING GEOGRAPHICAL BOUNDARIES.

FOR EXAMPLE IN THE PANHANDLE WHICH WE WERE SEVERELY CRITICIZED FOR THERE WAS HUGE DEBATE BETWEEN THE COASTAL PEOPLE ON THE NORTH PART, EXCUSE ME, ON THE SOUTH PART AND THE RURAL PEOPLE ON THE NORTHERN PART AND --

>> GETTING BACK, IS THAT YOUR SECOND POINT?

>> NO, THAT IS AN ILLUSTRATION. BUT LET'S TALK ABOUT POLITICAL FAVORITISM.

THAT'S PART OF IT BUT LET'S THINK HOW THAT WOULD WALK THROUGH.

WE HAVE A PLAN THAT UNDER ANY RATIONAL DEFINITION INCLUDING THEIR OWN IS, DOESN'T HAVE ANY KIND OF COGNISABLE UNFAIR RESULT AND CERTAINLY NO EVIDENCE OF POLITICAL INTENT. SO IF THE PURPOSE OF THESE TIER 2 STANDARDS IS TO INSURE AGAINST INTENTIONAL POLITICAL FAVORITISM AND THE RESULT OF THE MAP IS TO PRODUCE A FAIR RESULT, THEN WE'VE PRESUMABLY ACCOMPLISHED OUR PURPOSES.

IN OTHER WORDS, EVEN --

>> LET ME ASK ONE QUESTION WITH REGARD TO THAT.

>> SURE.

>> BECAUSE IN THE PAST THE NUMBERING HAS NOT BEEN AN ISSUE BECAUSE WE HAVEN'T HAD THESE STANDARDS BUT NOW WE, IN THE PAST WE HAVE NOT HAD ISSUES WITH REGARD TO NUMBERING OF THE PARTICULAR DISTRICTS BECAUSE

THAT'S NOT REALLY BEEN
SOMETHING TO BE FACTORED IN.
HOWEVER NOW WE HAVE ADDITIONAL
ISSUES WE HAVE TO LOOK AT,
I.E., INCUMBENCY.

SO WITH THE NUMBERING OF THE
DISTRICTS AND HOW IT AFFECTS
TERM LIMITS IS THAT SOMETHING
OR WHAT IS YOUR POSITION WITH
REGARD TO, IS THAT SOMETHING
NOW IF YOU LOOK AT IT AND SAY
WOW, LOOK AT THIS, THIS HAS
BEEN INTENTIONALLY STRUCTURED
SO THAT THESE INDIVIDUALS WILL
HAVE EXTENDED TERMS?

IS THAT AN ISSUE THAT IS
INVOLVED WITH INCUMBENCY IN THE
DRAWING OF DISTRICTS NOW
BECAUSE THEY JUST RENUMBERED
THEM?

>> ABSOLUTELY NOT, JUSTICE
LEWIS.

>> WHY?

I'M LOOKING FOR THE WHY.
I ASSUMED THAT WOULD BE YOUR
ANSWER.

>> NUMBER ONE, IT DOESN'T COME
WITHIN THE LETTER OF AMENDMENT
5.

AMENDMENT 5 SAYS IN
ESTABLISHING LEGISLATIVE
DISTRICT BOUNDARIES NO DISTRICT
SHALL BE DRAWN WITH THE INTENT
TO FAVOR AN INCUMBENT.

SO IT HAS NOTHING TO DO WITH
THE NUMBERS.

NUMBERS DON'T AFFECT THE
DISTRICT BOUNDARIES IN ANY WAY,
SHAPE OR FORM.

IT DOESN'T COME WITHIN THE
SPIRIT OF AMENDMENT 5 BECAUSE
THE SPIRIT OF AMENDMENT 5 WAS
YOU DIDN'T WANT TO PROVIDE
ELECTORAL ADVANTAGE TO AN
INCUMBENT VERSUS A NONINCUMBENT
CHALLENGER.

YOU DIDN'T WANT TO REARRANGE IT
IN A WAY THAT WOULD HURT THEM.
NONE OF IS THAT IMPLICATED BY
NUMBERING.

NUMBERING SAYS WHEN YOU CAN
STAND FOR RE-ELECTION.
SAYS NOTHING ABOUT THE
ELECTORAL DISTRICT WHEN YOU'RE
IN IT.

THIRD POINT, ALL OF THE PEOPLE
SUBJECT TO NUMBERING ARE
INCUMBENTS.

YOU CAN'T FAVOR INCUMBENTS
VERSUS NONINCUMBENTS IF THE
ENTIRE GROUP IS INCUMBENTS.

>> NO, CERTAINLY YOU CAN'T.
EXCUSE ME, I THINK YOU REALLY
CAN WHEN YOU START LOOKING AT,
IF YOU SCHEDULE THESE THINGS
OUT.

THERE WERE ACTUALLY STATEMENTS,
I REALIZE THAT PEOPLE ARE
TRYING TO DO AN EQUITABLE
APPROACH.

THIS IS NOT A CRITICISM OF
INTENT OR CHARACTER OR THOSE
INDIVIDUALS.

I'M ASKING JUST FROM A LEGAL
STANDPOINT, AND YOU PUT THE, YOU
PUT A CHART UP AND IT'S CLEAR
THERE ARE INCUMBENTS WHOSE,
UNDER THE TERM LIMITS PROVISION
ARE NOW EXCEEDING WHAT THE
PEOPLE OF FLORIDA SAID THEY
COULD NOT DO.

>> NO, BUT --

>> YOU'RE SAYING THAT'S
INCORRECT?

>> YES.

BECAUSE I THINK THERE IS A
CONFLICT IN -- IN 1982 THIS
COURT SAID ALL SENATORS HAD TO
STAND FOR RE-ELECTION DURING
THAT.

SO THEIR TERMS WERE
ARTIFICIALLY TRUNCATED.

NOT FROM THE NORMAL FOUR-YEAR
TERMS TO THE TWO-YEAR TERMS.

WHAT DID DEFENDANT SAY?

WELL IF YOU WERE HURT BY THAT
CONSTITUTIONAL PROVISION, IF
YOUR TERM WAS ARTIFICIALLY
TRUNCATED TO LESS THAN TWO
YEARS, ON THE BACK END YOU WILL
GET THE FOUR-YEAR TERM.

WE WOULD BE DOUBLY PENALIZING
PEOPLE WHO WERE ARTIFICIALLY
TRUNCATED BY REDISTRICTING IF
THEY THEN HAD TO STAND FOR
ANOTHER TWO-YEAR TERM BECAUSE
THEY'RE NOT GIVEN THE TERM THAT
THE FLORIDA CONSTITUTION
PROVIDES.

>> SO WHAT HAPPENS TO TERM
LIMITS?

THE PEOPLE OF FLORIDA PUT IN
OUR CONSTITUTION A PROVISION ON
TERM LIMITS.

>> THEY DID. THEY SAID YOU --

>> COULD I FINISH?

>> I'M SORRY. I APOLOGIZE.

>> SO WHAT YOU'RE SAYING IS
YOU CAN NOT LOOK TO THOSE TERM
LIMITS AS THEY ULTIMATELY ARE
APPLIED?

IS THAT YOUR ARGUMENT?

>> NOT AT ALL, NO, NO.

OBVIOUSLY YOU CAN APPLY THE TERM
LIMITS PROVISION TO WHATEVER
NUMBERING SCHEME OR SENATE
SCHEME THEY HAVE COME UP WITH
BECAUSE THAT IS CONSTITUTIONAL
PROVISION.

>> BUT DOES THE TERM LIMITS, DO
THEY APPLY TO DISTRICTS OR TO
INDIVIDUALS?

>> NO, TO INDIVIDUALS.

OBVIOUSLY THE INDIVIDUAL IS
TERM-LIMITED.

HE CAN'T RUN FROM --

>> RIGHT.

YOU CAN'T MOVE TO THE NEXT

DISTRICT AND THEN RUN AGAIN
IN THAT NEXT DISTRICT FOR
ANOTHER TERM, CAN YOU?

>> NO.

AS I UNDERSTAND IT, WELL, THE
TERM LIMIT IS OBVIOUSLY THE
TERM LIMIT PROVISION THAT
APPLIES TO INDIVIDUALS.

>> INDIVIDUALS.

>> BUT THE LENGTH OF YOUR TERM
IN A REDISTRICTING CONTEXT IS
INFLUENCED WHETHER YOU HAVE
EVEN OR ODD NUMBER.

MY ONLY POINT WAS THIS DOESN'T
ERODE OR EVADE OR OVERRIDE THE
TERM LIMITS PROVISION.

IT RECOGNIZES THE TERM LIMIT
PROVISIONS AND ASKS WHETHER OR
NOT IT'S FAIR TO HAVE PEOPLE
WHOSE TERMS WERE ARTIFICIALLY
TRUNCATED BY REDISTRICTING TO
LESS THAN FOUR YEARS AND CAN'T
THEY BE GIVEN A FOUR-YEAR ñ
WE'RE MAKING DECISIONS AMONG
INCUMBENTS.

WE COULD TELL THE POOR PEOPLE
YOU ONLY GET TWO-YEAR TERM THIS
TIME BECAUSE OF REDISTRICTING
AND ONLY GET ANOTHER TWO-YEAR
TERM BECAUSE YOU HAVE TO RUN
AGAIN.

WOULDN'T IT BE MORE CONSISTENT
TO RECONCILE THE COMPETING
INSTRUCTIONS OF THE FLORIDA
CONSTITUTION THAT PEOPLE HAD TWO
YEARS GOING IN AND FOUR YEARS
GOING OUT AND VICE VERSA?

>> THE FIRST PLAN THAT WAS
PUBLISHED ON THIS WAS NOVEMBER
28th.

IN THAT PLAN 20 INCUMBENT
SENATORS WERE GOING TO BE GIVEN
TENURES OF EIGHT YEARS WHICH IS
WHAT EVERYONE THOUGHT WAS THE
TERM LIMIT.

FIVE INCUMBENT SENATORS WERE

GIVEN NINE AND FOUR INCUMBENT SENATORS BECAUSE OF, AGAIN WHETHER THEY RAN IN SPECIAL ELECTIONS, WERE GIVEN 10. WHEN THE SENATE REDID ITS PLAN ON DECEMBER 30th, WHEN THEY REDID THE NUMBERING, 23 INCUMBENT SENATORS ARE NOW ELIGIBLE FOR 10-YEAR TERMS. FIVE INCUMBENT SENATORS ARE ELIGIBLE FOR 10-YEARS OF 11 YEARS AND ONE INCUMBENT SENATOR, WHO IS JACK LATVALA, IS ELIGIBLE FOR A MAXIMUM TENURE OF EIGHT YEARS. IT SEEMS TO ME, AND AGAIN, YOU MAY BE RIGHT, THAT THE NUMBERING SYSTEM IS NOT THE PURVIEW OF THIS COURT'S REVIEW BUT IN TERMS OF SAYING THAT IT WAS DONE TO MAKE SURE THAT THERE WEREN'T, WASN'T A POOR SENATOR THAT WAS LEFT OUT, LOOKS LIKE THE ONLY POOR SENATOR THAT GOT LESS THAN A, THAT GOT ONLY AN EIGHT-YEAR TERM WAS JACK LATVALA. DID YOUR ANALYSIS SHOW THAT TO BE THE CASE?

>> I THINK THE KEY NUMBER IN YOUR POINT THERE WAS 23. OBVIOUSLY THERE IS 20 EVEN AND 20 ODD NUMBERS. SO THE RULE WAS EXACTLY AS I STATED. THOSE WHO WERE IN TWO-YEAR TERMS PRIOR TO REDISTRICTING GOT FOUR YEARS AFTER. THOSE WHO WERE IN FOUR GOT TWO YEARS AFTER. I'M SORRY.

>> I THOUGHT WHAT YOU WERE SAYING SOMEHOW IF IT HAD BEEN LEFT LIKE IT WAS ON NOVEMBER 28th THERE WOULD BE SOME PEOPLE THAT HAD GOTTEN ONLY SIX-YEAR

TERMS.

THAT WASN'T THE CASE, WAS IT?
EVERYBODY WAS GETTING, NO MATTER
IT WAS EVEN OR ODD WAS GETTING
A EIGHT-YEAR TERM, OPPORTUNITY
FOR EIGHT-YEAR TERM.

>> NO.

THERE WERE ONLY PEOPLE GOING TO
SERVE TWO-YEAR TERMS BECAUSE
THEY ARE ELECTED IN 2010 OR IN
SPECIAL ELECTIONS.

THAT'S MY POINT.

THERE WERE 23 OF THOSE.

YOU HAVE TO HAVE A TIEBREAKER
AMONG THE 23.

BECAUSE THEY COULDN'T ALL GET
FOUR-YEAR TERMS, RIGHT?

THE 23 PEOPLE HAD LESS THAN
TWO-YEAR TERMS.

SO AS TO THOSE THREE PEOPLE
THEY DEFINITELY DID SAY WE'RE
NOT GOING TO TRY TO DOUBLY
PENALIZE YOU.

YOU WILL HAVE TO RUN AGAIN IN
TWO YEARS.

SO YOU GOT A TWO-YEAR TERM.

NOW YOU WILL GET A SECOND
TWO-YEAR TERM.

WHO WILL WE VISIT THAT HARM ON,
THAT TRUNCATION ON?

WE'RE NOT GOING TO VISIT
ON PEOPLE WHO WOULD THEN BE
TERM-LIMITED.

WE'RE GOING TO DO IT WITH PEOPLE
WHO WILL NOT BE UNTERM-LIMITED
WHEN YOU DO THE TWO YEARS.

SO AS TO THOSE THREE THE
TIEBREAKER CLEARLY WAS, WOULD
THEY GET A TRIPLE WHAMMY OR A
DOUBLE WHAMMY?

THEY HAVE TWO-YEAR TERMS GOING
INTO REDISTRICTING.

THEY ONLY GET TWO-YEAR TERMS
COMING OUT.

WE'LL NOT YET ADD A THIRD
BURDEN OF TERM LIMITING THEM

OUT.

THEY WILL BE ABLE TO RUN IN A WAY AT END OF THE DAY BECAUSE OF SEVERELY, ONE WAY TO LOOK AT IT IS, THEY HAVE TO RUN MORE THAN EVERYBODY ELSE.

SO THE IDEA WAS THE CONSEQUENCE OF THAT IS TO GIVE THEM A 10-YEAR TERM BECAUSE OF THE FREQUENCY OF THE ELECTION. THAT WAS ALL THAT WAS GOING ON THERE.

AND AGAIN, THIS WAS CHOICES OF EQUITY AMONG THE INCUMBENTS. IT HAD NOTHING TO DO WITH, DRAWING LINES IN A WAY THAT FAVORED INCUMBENTS OVER, OVER CHALLENGERS.

IN TERMS OF THE GENERAL POINT ABOUT FAVORING INCUMBENTS I WANT TO COME BACK TO THE POINT THAT THEY CRITICIZED US CONSTANTLY FOR FAVORING INCUMBENTS BUT THEY IGNORE THAT THIS WAS DIRECTLY RELATED TO THE VOTING RIGHTS ACT.

THEY MAKE A BIG DEAL ABOUT THE FACT THAT SENATOR GARDINER HAD AN UNUSUAL DISTRICT 10 AND THEY CLAIM THAT WAS SOME SORT OF GERRYMANDERED TO HELP HIM. WHAT THEY FAILED TO NOTE IS THAT SENATOR GARDINER'S DISTRICT 10 IS DIRECTLY BETWEEN DISTRICT 12, WHICH IS THE LONG-STANDING BLACK-PERFORMING DISTRICT IN ORLANDO AND DISTRICT 14 WHICH IS THE NEW HISPANIC MAJORITY DISTRICT THAT WE HAD CREATED AT THE INSTIGANCE OF LATINO JUSTICE. WHEN YOU'RE CREATING MINORITY DISTRICTS, HISPANIC AND BLACKS YOU NEED TO SEPARATE THEM. THERE IS BIG WHITE COMMUNITY BETWEEN THEM.

YES, ABSOLUTELY WE DID DO THAT.
NOT TO HAVE SOME POLITICAL
FAVORITISM TOWARDS HIM BUT IN
ORDER TO COMPLY WITH THE
DESIRES OF LATINO JUSTICE AND
THE NAACP ON WHERE THE MINORITY
DISTRICTS WOULD BE DRAWN.
YOU ALSO ASKED ABOUT THE REOCK
TEST.

I WILL POINT OUT THAT OUR
DISTRICT 10 WHICH THEY CAME IS
THIS HORRIBLY DESIGNED DISTRICT
HAS A BETTER REOCK SCORE THAN
THEIR DISTRICT 22 WHERE THEY
PAIR SENATORS GARDINER AND
SIMMONS.

THEY HAVE A 33.

WE'VE GOT A 46.

THAT WILL GIVE YOU SOME IDEA OF
WHAT THEIR VIEW IN TERMS OF
VISUAL COMPACTNESS AND ITS
SQUARING IN THE REAL WORLD.

>> REFRESH MY RECOLLECTION, ARE
THOSE TWO MAJORITY MINORITY
DISTRICTS IS THAT IS WHAT'S NOW
BEEN CREATED?

>> WE ALREADY HAD EXISTING
BLACK DISTRICT WHICH IS MORE
LIKE 40% BUT OBVIOUSLY BEEN
PERFORMING AS A BLACK DISTRICT.
WE CREATED A HISPANIC MAJORITY
DISTRICT OF ROUGHLY 50.5%
HISPANIC IN THE AREA WHICH
ESSENTIALLY LATINO JUSTICE HAD
DRAWN AND WE DID IT BY THEM
DOING WHAT THEY DID WITH RESPECT
TO SENATOR GARDINER AND SIMMONS
THEY COULDN'T CREATE THE 50.5
DISTRICT.

THEY KEEP ADDRESSING THE VOTING
RIGHTS ACT AS SOME KIND OF
INCUMBENCY FAVORITISM.

DADE COUNTY IS PERHAPS A BETTER
EXAMPLE.

THEY CRITICIZE US FOR
SEPARATING OUT WHITE AREAS ON

THE BEACHES FROM THE HISPANIC MAJORITY DISTRICTS THAT WE'RE OBLIGED TO MAINTAIN IN THEIR EXISTING FORM.

THEY SUGGEST THIS IS SOME SORT OF FAVORITISM BY THE WAY TOWARDS DEMOCRATS, SO CAN'T BE POLITICAL FAVORITISM TOWARDS SENATOR MARGOLIS.

WHAT IS THEIR ALTERNATIVE?

THEY PAIR SENATOR MARGOLIS WITH A REPUBLICAN HISPANIC INCUMBENT. AND THAT DISTRICT UNDER THEIR OWN ANALYSIS IS NOW 50% DEMOCRATIC WHEN THEY AGREE THAT HISPANICS IN THAT AREA VOTE REPUBLICAN.

SO THEY PUT A DEMOCRATIC INCUMBENT AND DIMINISHED THE ABILITY TO ELECT THE EXISTING REPUBLICAN, HISPANIC REPUBLICAN IN THAT DISTRICT.

>> IF WE GO BACK TO DISTRICT 10 I GUESS IT REALLY JUST HAPPENSTANCE THAT LITTLE AREA OF DISTRICT 10 THAT YOUR OPPONENTS ARE COMPLAINING ABOUT HAS, IS WHERE THE INCUMBENT NOW LIVES?

>> WELL, YOU KNOW, WE CAN ALL BE CYNICAL ABOUT THIS BUT IT IS NOT UNUSUAL FOR WHITE REPUBLICAN SENATORS TO LIVE IN PREDOMINANTLY WHITE AREAS. NOR IS IT UNUSUAL TO SEPARATE PREDOMINANTLY WHITE AREAS FROM A PREDOMINANTLY BLACK AREA IN THE NORTH AND PREDOMINANTLY HISPANIC AREA IN THE SOUTH. THAT IS HOW YOU DRAW MAJORITY MINORITY DISTRICTS.

THAT IS HOW YOU DO IT IN DADE COUNTY AND THAT IS HOW YOU DO IT IN ORLANDO.

THE PROOF IS IN THE PUDDING, JUSTICE QUINCE, IF YOU DON'T DO

IT YOU CAN CREATE FOR THE FIRST TIME IN FLORIDA HISPANIC MAJORITY DISTRICT IN CENTRAL FLORIDA THAT BOTH OF THE NAACP AND LATINO JUSTICE WERE ADVOCATING.

SO YOU CAN ELEVATE A NAKED DESIRE TO PAIR INCUMBENTS OVER CREATING THESE THINGS AND I THINK THE WORST YOU CAN ASSUME IS THAT WE MIGHT HAVE DONE THE RIGHT THING FOR THE WRONG REASON BUT YOU CAN'T ASSUME THAT EITHER THE NAACP OR LATINO JUSTICE WAS DOING, HAD PARTISAN MOTIVATIONS AND WE FOLLOWED THEIR DISTRICTS THROUGHOUT THE STATE.

AND I DON'T UNDERSTAND HOW A DESIRE TO SAY THAT A REPUBLICAN MAJORITY LEADER SHOULD BE HURT WOULD OUTWEIGH FOLLOWING WHAT THE CIVIL RIGHTS GROUPS HAVE BEEN ADVOCATING TO US AND TO THIS COURT AS NECESSARY TO MAINTAIN MINORITIES ABILITY TO ELECT.

>> WANT TO GO BACK TO ONE OF THE DISTRICTS THAT YOU HAD MENTIONED THAT DOESN'T HAVE A MINORITY MAJORITY ISSUE WHICH IS DISTRICT 1 AND 3.

AND YOU MENTIONED, AND I KNOW THE BRIEF SPEAKS OF THE FACT THAT YOU WERE PROTECTING COMMUNITIES OF INTEREST BUT YOU ALSO AGREE THAT COMMUNITIES OF INTEREST ARE NOT, IS NOT A CONSTITUTIONAL STANDARD.

THE PROBLEM THAT I SEE IN TERMS OF THE FACT THAT THERE ARE OF COURSE TWO INCUMBENTS THAT ARE NOW NOT PITTED AGAINST ONE ANOTHER IS THAT THE BOUNDARIES BETWEEN DISTRICT 1 AND 3 FOLLOW EVERYTHING FROM

COUNTY LINES TO I-10 TO MINOR ROADWAYS AND EVEN CREEKS. IF YOU GO ALONG THE BOUNDARY THAT WAS DRAWN, THERE IS NO DISCERNABLE PRINCIPLED WAY TO GET THERE AND I SEE THAT AS IN STARK CONTRAST, I KNOW NOBODY WANTS THE HOUSE TO BE PITTED AGAINST THE SENATE BUT THE HOUSE HAS VERY CONSISTENT APPLICATION OF THE USE OF COUNTY BOUNDARIES FOR VERY GOOD REASON BECAUSE, YOU KNOW, BEING A PART OF A COUNTY IS WHAT PEOPLE SEE AS THEIR, THAT IS UNDERSTOOD AS THEIR NATURAL COMMUNITY.

SO I HAVE GOT A PROBLEM WITH THE ASSESSMENT OF THAT. I, AND IF THE REASON IS, NOT TO PROTECT THE TWO INCUMBENT SENATORS WHICH YOU SAY WOULD ACKNOWLEDGE WOULD BE AN IMPROPER REASON BUT TO PROTECT COMMUNITIES OF INTEREST BUT ON THE OTHER HAND THE CONSTITUTION SAYS THESE DISTRICTS SHALL BE COMPACT.

SO YOU HAVE A ABSOLUTE WHICH SHALL BE COMPACT.

THEY'RE NOT COMPACT.

HOW DO YOU RESPOND ON DISTRICT 1 AND 3?

>> THREE POINTS.

NUMBER ONE, TO THIS COMPLETELY FALLACIOUS NOTION THAT THIS WAS SOMEHOW POLITICAL OR DRIVEN BY AVOIDING PAIRS OF INCUMBENTS, THE COMPLETE REFUTATION IS LOOK AT THEIR MAP.

THEY DREW IT NORTH-SOUTH AND PRESERVED THESE COUNTIES.

THEY DID NOT PUT SENATOR GAETZ AND SENATOR EVERS IN THE SAME DISTRICT BECAUSE WHEN YOU DRAW IT, SENATOR EVERS AT THE TOP OF

THE COUNTY, SENATOR GAETZ IS
THE BOTTOM.

SO IT HAD NOTHING TO DO WITH
KEEPING THE SENATORS APART.
NOTWITHSTANDING THAT
LOOK AT THEIR MAP IN TERMS OF
REPUBLICAN REPRESENTATION.
THESE ARE SOLID REPUBLICAN
DISTRICTS WHETHER YOU DRAW THEM
NORTH, SOUTH, EAST, WEST.
YOU CAN NOT DRAW DISTRICTS IN
THAT AREA THAT ARE NOT SOLID
REPUBLICAN.

YOU PUT THE POINT THESE ARE
DESIGNED AS SAFEGUARDS AGAINST
GERRYMANDERING.

MY POINT IS IT HAD NOTHING TO
DO WITH EITHER OF THOSE IN
THOSE CIRCUMSTANCES.

LET'S -- WHAT WERE THE NEUTRAL
REASONS TO DO IT?

THEY HAD A CHOICE BETWEEN
POLITICAL BOUNDARIES AND
GEOGRAPHICAL BOUNDARIES.
THAT IS A CHOICE AMENDMENT 5
CONSCIOUSLY GAVE TO THE
LEGISLATURE.

IT DIDN'T ELEVATE POLITICAL
BOUNDARIES OVER GEOGRAPHICAL
BOUNDARIES. IT GAVE THEM EQUALLY
DIGNITY.

THERE IS NOT A BOUNDARY IN
EITHER OF THOSE DISTRICTS NOT
FOLLOWING WELL-RECOGNIZED
INTERCOASTAL WATERWAY, HIGHWAY,
OBVIOUSLY THE GULF.

THEY DO IT.

>> IS A CREEK, IS A CREEK A
GEOGRAPHIC --

>> YELLOW RIVER IS IDENTIFIABLE
GEOGRAPHIC FEATURE.

IT IS NOT -- I'M SORRY.

>> SO BY GIVING A
GEOGRAPHICAL BOUNDARY, THAT
MEANS OTHER THAN PUTTING A
DISTRICT IN THE MIDDLE OF A

FIELD, THAT IT'S, YOU CAN JUST
DRAW IT WHEREVER YOU WANT?
AND THAT MAY BE WHAT THE VOTERS
INTENDED BUT IS THAT THE
POSITION OF THE SENATE?

>> AGAIN I WILL MAKE TWO
POINTS.

THIS IS UNIQUE AMONG THE 50
STATES TO COUNT GEOGRAPHICAL
BOUNDARIES.

THIS IS A CONSCIOUS DEPARTURE
FROM WHAT THE LEAGUE OF WOMEN
VOTERS RECOMMENDED THIS COURT
IN 2002 WHICH SAID JUST DO
POLITICAL BOUNDARIES.

NOW IT WAS MENTIONED BEFORE,
YOU CAN'T JUST WRITE WORDS OUT
OF THE CONSTITUTION AND PRETEND
THEY DON'T EXIST.

SO UNLESS WE ARE GOING TO
ELIMINATE THAT FROM THE
CONSTITUTION, YES.

THE LEGISLATURE GETS THE CHOICE
OF GEOGRAPHICAL BOUNDARIES.

NOW WHY IS THAT WORSE IN THE
PANHANDLE EXAMPLE THAN
POLITICAL BOUNDARIES?

THE POLITICAL BOUNDARIES DO
UNITE PEOPLE IN A COUNTY.

THEY HAVE COMPLETELY DIVERSE
INTERESTS IN THE LEGISLATURE.
SOME OF THEM ARE RURAL PEOPLE
THAT HAVE AGRARIAN INTERESTS
AND SOME OF THEM ARE COASTAL
PEOPLE WHO HAVE AN ENTIRELY
DIFFERENT OUTLOOK.

IT WAS UNDISPUTED THAT THE
COASTAL WOULD DOMINATE THE
RURAL IF YOU DID THIS VERTICAL
DRAW THAT THEY ARE ADVOCATING.

AND IT WAS VIEWED THAT THAT
WOULD NOT MAKE A LOT OF SENSE
PARTICULARLY SINCE, LET'S FACE
IT, FLORIDA IS NOT A
COMPACT STATE.

IT IS A VERY NONCOMPACT STATE

THAT IS SURROUNDED BY WATER.
NO ONE WOULD DISPUTE THAT IF
THE LEGISLATURE, I DON'T THINK,
IF THE LEGISLATURE HAS
DISCRETION UNDER THE AMENDMENT
TO RECOGNIZE THAT COASTAL
INTERESTS ARE DISTINCT FROM
OTHER INTERESTS, URBAN, RURAL
OR WHATEVER, THAT IT MAKES
PERFECT SENSE FROM A EFFECTIVE
REPRESENTATION STANDPOINT TO
GIVE VOICE TO THAT.

AND IF YOU READ THE COMPACTNESS
CASES, THEY ARE NOT SIMPLY
ABOUT SHAPES AND NUMBERS AND
SCORES.

THEY ALL EMPHASIZE WHAT IT IS
ABOUT IS EFFECTIVE REPRESENTATION.
THAT IS WHY EVERY COURT HAS
BEEN LOATHE TO PUT SOME KIND OF
NUMERICAL HANDCUFFS ON
LEGISLATURES WHEN THEY HAVE
DISTRICTING DECISIONS IN FRONT
OF THEM THAT MAKE ABSOLUTELY
PERFECT SENSE FROM REALLY ANY
REASONABLE PERSPECTIVE AND
THAT, I THINK, IS THE CONSCIOUS
DECISION THAT THE FRAMERS OF
AMENDMENT 5 TO GIVE THE
LEGISLATURE THE DISCRETION WHEN
YOU HAVE GEOGRAPHICAL
BOUNDARIES PARTICULARLY IN
COASTAL DISTRICTS TO GIVE THE
LEGISLATURE TO THE DISCRETION
IT UTILIZE THAT DISCRETION.

>> DOES ONE LOOK AT
CONSISTENCY?

I MEAN FOR EXAMPLE, THIS IS
JUST ABSOLUTELY IT APPEARS, AND
YOU CORRECT ME IF I'M WRONG, IN
CONNECTION WITH THE LAKELAND
SITUATION?

BECAUSE THAT SAME REASONING IS
ABSOLUTELY CONTRARY TO WHAT WAS
DONE IN LAKELAND, ISN'T IT?
WITH THAT LONG STRIP THAT GOES

OVER TOWARDS THE COAST?

>> I THINK THAT WAS ANOTHER
EFFORT TO TRY AND HAVE --

>> ABSOLUTELY CONTRARY TO WHAT
YOU'RE SAYING.

DO WE HAVE CONSISTENCY IN
APPLICATION?

IS THAT SOMETHING WE SHOULD
LOOK TO OR JUST IN ONE
SITUATION YOU WILL DO IT ONE
WAY AND IN ANOTHER SITUATION
YOU DO IT A DIFFERENT WAY?

>> IF YOU HAD A FULL TRIAL
WHERE YOU COULD WALK THROUGH
REGIONS OF THE STATE AND
ENGAGE IN THAT FACT INTENSIVE
ANALYSIS YOU COULD FIND OUR
METHODS AS CONTEXTAL.
I DON'T THINK THAT IS IN
LAKELAND.

IT IS A RELATIVELY CONSISTENT
PATTERN.

IF THEY HAD AN OPTION FOR COASTAL
DISTRICTS WHICH ADMITTEDLY
UNDER THE NUMERICAL SCORES ARE
LESS COMPACT BECAUSE THEY RUN
LIKE THIS RATHER THAN LIKE THAT,
THE SENATE'S CHOICE WHEN IT
MADE SENSE WAS TO ACTUALLY
UNITE PEOPLE WHO HAVE COMMON
INTERESTS IN FRONT OF THE
LEGISLATURE.

THEY DIDN'T DO IT TO THE
DETRIMENT OF ANYTHING IN
AMENDMENT 5.

LAKELAND'S COMPLAINT, SOMETIMES
POPULATION YOU HAVE TO GO OUT A
LITTLE BIT FARTHER THAN YOU
OTHERWISE WOULD.

POLK COUNTY IS WHERE LAKELAND
IS AND DID.

>> I THINK WHAT MY QUESTION
REALLY IS MORE FUNDAMENTAL THAN
EVEN THAT.

IS THERE A CONSISTENCY OF
APPLICATION, OF REASONS THAT

THE COURT WOULD LOOK TO
DETERMINE VALIDITY?
YOU UNDERSTAND WHAT I'M SAYING?
WHETHER IT HAPPENS TO BE
PANHANDLE OR MIAMI BUT IS THERE
A CONSISTENCY?
THIS SEEMS TO BE INCONSISTENT
LOGIC IS WHAT I'M SAYING.

>> NO.

I THINK YOU COULD CERTAINLY
EXPOSE ANY INCONSISTENCIES TO
SUPPOSE OUR ASSUMPTION OF GOOD
FAITH WE'RE NO LONGER ENTITLED
TO.

THAT IS A FAIR IN TRIAL
PROCEEDING.

I WANT TO MAKE THE POINT ON
LAKELAND THAT IS IN POLK
COUNTY.

ONE OF THE AREAS OF THE STATE
ALWAYS HAPPENS WHEN YOU DRAW
MAPS, POPULATION CONVERGES
THERE.

THEY CRITICIZE US FOR BREAKING
POLK COUNTY UP FOUR TIMES.

AGAIN THEIR ALTERNATIVE MAP
BREAKS IT THREE TIMES. THAT IS
BECAUSE WHERE THE POPULATION
TENDS TO WIND UP.

THE ONLY REASON THEY DON'T HAVE
THE FOURTH BREAK IN THEIR MAP
THAT, IS BECAUSE AGAIN THEY
DIDN'T CREATE THIS HISPANIC
MAJORITY DISTRICT.

WE WENT INTO POLK COUNTY TO GET
SOME ADDITIONAL HISPANIC
POPULATION OUT OF IT TO, JUST
AS LATINO JUSTICE HAD
RECOMMENDED, GET US UP TO A
MAJORITY DISTRICT IN ORLANDO.
AGAIN, YOU LOOK AT THESE THINGS
IN ISOLATION, YOU DON'T GET THE
FULL PICTURE.

YOU NEED TO UNDERSTAND HOW
THESE MAPS ARE DRAWN.

UNLESS THERE ARE FURTHER

QUESTIONS, THANK YOU.

>> WE THANK YOU. THE COURT WILL NOW STAND IN RECESS FOR 10 MINUTES.

>> ALL RISE.

(COURT ADJOURNS AT 10:05 AM)

(COURT RESUMES AT 10:20 AM)

>> ALL RISE.

THE SUPREME COURT OF FLORIDA IS NOW IN SESSION.

PLEASE BE SEATED.

>> MR. ^CHIEF JUSTICE, MEMBERS OF THE COURT, MY NAME IS DAVID THERIAQUE

I REPRESENT THE CITY OF LAKELAND.

>> YOU HAVE 10 MINUTES RIGHT?

>> YES, SIR.

>> THE TIME REFLECTED IS 10 MINUTES.

>> I HAVE WITH ME

TIM MCCAUSLAND AND

OUR ASSOCIATE CHRIS BUSCH.

LET ME THANK THE COURT FOR PROVIDING THE CITIZENS OF LAKELAND TO BE HEARD TODAY.

AS YOU ALL KNOW THE CITY OBJECTS BECAUSE THE CITY'S BOUNDARIES HAVE BEEN BIFURCATED.

IT IS OUR POSITION THAT BIFURCATION CONSTITUTES A VIOLATION OF THE ENVIRONMENT REQUIREMENTS OF ARTICLE III, SECTION 21 WHICH MANDATES THAT DISTRICTS SHALL, WHERE FEASIBLE, UTILIZE EXISTING POLITICAL AND GEOGRAPHICAL BOUNDARIES UNLESS THE TIER 1 REQUIREMENTS PRECLUDE IT.

>> ARE YOU ATTACKING THE SENATE AND HOUSE OR JUST THE SENATE?

>> THE SENATE, MA'AM.

>> THE SENATE'S ARGUMENT IS THAT BECAUSE THE AMENDMENT SAYS, FIRST OF ALL, THE

COURT SAYS WHERE FEASIBLE,
YOU WOULD AGREE WITH THAT?

>> YES, IT DOES SAY THAT.

>> BECAUSE IT SAYS POLITICAL
AND GEOGRAPHIC BOUNDARIES THAT
THE SENATE REALLY, THE VOTERS
GAVE THE LEGISLATURE THE
DISCRETION TO PICK AND CHOOSE
REALLY ANY BOUNDARY THAT THEY
WANT AS LONG AS IT'S A
GEOGRAPHIC OR POLITICAL
BOUNDARY.

WHAT IS YOUR TERP -- HOW WOULD
YOU ADVISE US FIRST OF ALL
INTERPRETING THAT PARTICULAR
PROVISION, GIVE IT SOME MEANING
IN ACCORDANCE WITH THE INTENT
OF THE VOTERS?

AND HOW DOES THAT THOUGH APPLY
TO YOUR PARTICULAR CHALLENGE?

>> I'LL START WITH THE SECOND
QUESTION FIRST BECAUSE IT'S
QUICK.

I DON'T SEE ANYTHING IN THE
RECORD THAT THE SENATE RELIED
UPON A GEOGRAPHICAL BOUNDARY
WHEN THEY BIFURCATED THE CITY
OF LAKELAND.

SO FROM THE CITY'S PERSPECTIVE
WE DON'T SEE ANYTHING THAT
APPLIES TO CITY BUT WE AGREE
THIS COURT SHOULD PROVIDE A
DEFINITION FOR GEOGRAPHICAL
BOUNDARY.

I DON'T KNOW OF ANY DEFINITION
THAT EXISTS.

I WOULD SUBMIT TO THE COURT
THAT IT MUST BE MORE THAN A
GEOGRAPHICAL FEATURE.

THAT THERE IS A DISTINCTION
BETWEEN A BOUNDARY AND A
FEATURE.

PERHAPS A GEOGRAPHICAL BOUNDARY
WHEN USED IN THE CONTEXT OF A
CITY OR COUNTY IS A LAKE THAT
SPLITS THE CITY BUT THERE MUST

BE SOMETHING MORE THAN A CREEK,
OR A ROAD. IF THE STANDARD IS
GEOGRAPHICAL BOUNDARY WILL BE
CONSTRUED AS A CREEK OR A ROAD
OR A STREAM, BASICALLY YOU'VE
RENDERED THAT CLAUSE A NULLITY.

THERE WOULD BE NO, NO STANDARD
THAT WOULD HOLD EITHER THE
SENATE OR HOUSE'S FEET TO THE
FIRE.

>> NOW THEIR ARGUMENT THOUGH
FOR LAKELAND IS THAT THERE WAS
NO NEFARIOUS PURPOSE, NO INTENT
TO FAVOR OR DISFAVOR AN
INCUMBENT.

THAT YOU, LAKELAND, JUST, YOU
HAD TO START SOMEPLACE IN THE
STATE AND LAKELAND HAPPENS TO
BE IN THE MIDDLE AND IT JUST,
IF THEY HAD STARTED
DIFFERENTLY, STARTED WITH
LAKELAND MAYBE THERE WOULD BE
ANOTHER COMMUNITY THAT WOULD
HAVE ENDED UP BEING SPLIT.
AND OF COURSE I WOULD ADD THERE
ARE NOT, THERE ARE, IN THE
SENATE MAP AS WELL AS THE HOUSE
MAP THAT FOLLOWED COUNTY
BOUNDARIES THERE ARE SPLITS OF
CITIES.

IT IS NOT POSSIBLE TO KEEP
EVERY CITY OR COUNTY TOGETHER.
SO WHAT'S YOUR ARGUMENT ON, HOW
DO WE, IF THEY SAY, NO, WE DID
IT IN THE DRAWING AND UNLESS WE
REDREW THE WHOLE MAP, WE CAN'T
HELP LAKELAND?

>> YES, YOUR HONOR, WE THINK
THEY SHOULD REDRAW THE WHOLE
MAP.

THERE IS NOTHING IN THE
CONSTITUTION THAT STATES THAT
THE POLITICAL BOUNDARIES SHALL
BE UTILIZED EXCEPT FOR THE
POINT OF CONVERGANCE.

>> I GUESS, IN TERMS OF THIS,
THE, MANY OF THE STATES -- AND I
HAVE LOOKED AT EVERY STATE TO
SEE HOW THEY DO IT.

A LOT OF THEM CONSIDER
ALTERNATIVE MAPS NOT TO SEE,
BECAUSE THEY DON'T HAVE TO PICK
THE BEST MAP.

THEY PICK A MAP THAT IS
CONSTITUTIONALLY VALID BUT TO
PROVE A POINT, YOU HAVE THE
CHALLENGER ESTABLISH THE MAP.
NOW, AND AGAIN I REALIZE THERE
IS PROBABLY LIMITED RESOURCES
WHATEVER, BUT THE ONLY MAP THAT
WE RECEIVED WAS FROM THE
COALITION AND AS WAS POINTED
OUT THERE IS SOME ISSUES WITH
THE COALITION MAP.

HOW DO WE, IN TERMS OF BURDEN,
YOU WOULD AGREE, FIRST OF ALL
YOU HAVE THE BURDEN TO
ESTABLISH, OR DO YOU AGREE WITH
THAT, THAT YOU HAVE THE BURDEN
TO ESTABLISH THERE WAS A
VIOLATION OF THE CONSTITUTIONAL
STANDARD?

>> I BELIEVE THE LEGISLATURE
HAD THE INITIAL BURDEN TO
DEMONSTRATE IN THE RECORD THAT
THERE WAS A BASIS FOR SPLITTING
LAKELAND.

AND WHEN WE REVIEWED THE
RECORD, YOUR HONOR, WE SAW
NOTHING IN THE RECORD THAT
INDICATED THAT LAKELAND NEEDED
TO BE SPLIT IN ORDER TO AVOID
FAVORING OR DISFAVORING AN
INCUMBENT OR POLITICAL PARTY.
WE SAW NOTHING IN THE RECORD
THAT IT WAS NECESSARY TO SPLIT
LAKELAND IN ORDER TO AVOID
INTERFERING WITH THE VOTING
RIGHTS OF MINORITIES.
WE SAW NOTHING THAT INDICATED
THAT LAKELAND HAD TO BE SPLIT

TO MAINTAIN A CONTINUITY
REQUIREMENT.

NOR ANYTHING IN THE RECORD ONE
PERSON ONE VOTE REQUIREMENT.

>> WHAT ABOUT THE PRESUMPTION OF
VALIDITY?

I GUESS WE'LL TALK ABOUT THAT
WITH THE CHALLENGERS BUT DON'T
WE ACTUALLY START OUT TO
PRESUME THAT THE MAPS ARE VALID
AND SO YOU'RE SAYING WELL, THEY
STILL HAVE TO, WE HAVE TO BE
ABLE TO LOOK IN THE RECORD AND
SEE AND UNDERSTAND WHY THEY
DREW IT THAT WAY AND THEIR
ARGUMENT IS WE DREW IT THAT WAY
BECAUSE WE STARTED IN ONE PART
OF THE STATE AND WHEN WE GOT TO
LAKELAND IT WAS THE ONLY WAY
THAT WE COULD DRAW IT.

AND IF WE DON'T SEE THAT, YOU
SAY, NO, THERE WAS ANOTHER
PERFECTLY FINE WAY TO DRAW IT,
THAT DOESN'T SACRIFICE
ANYTHING, THAT DOESN'T SPLIT
LAKELAND, THEN WE'VE GOT SOME
EVIDENCE OF THAT.

BUT SHORT OF THAT, I DON'T KNOW
HOW WE CAN, YOU KNOW, I FEEL
BADLY FOR LAKELAND. HOW WE CAN
RECOGNIZE THAT TYPE OF
CHALLENGE IN THIS TYPE OF
PROCEEDING?

>> MY VIEWPOINT, YOUR HONOR,
THAT IT WASN'T THE CITY'S
OBLIGATION OR THIS COURT'S
OBLIGATION TO DRAW THE MAP.
THAT IS THE FIRST
RESPONSIBILITY OF THE
LEGISLATURE.

AND THERE SHOULD BE SOMETHING
IN THE RECORD THAT DEMONSTRATES
THAT THE DECISIONS THAT THEY
MADE WERE BASED UPON THE
CONSTITUTIONAL REQUIREMENTS
THAT SECTION 21 IMPOSED UPON

THEM.

>> I UNDERSTOOD FROM YOUR OPPOSITION'S ARGUMENT THEY NEEDED TO PULL NUMBERS YOUR AREA, YOUR CONCERNED AREA, OVER TOWARD THE EAST FOR THAT DISTRICT.

WHAT IS YOUR ARGUMENT, RESPONSE TO THAT?

THAT WAS A SUBSTANTIVE ARGUMENT I UNDERSTOOD THEM TO MAKE.

>> WHAT I HEARD THEM SAY, YOUR HONOR, THEY NEEDED TO PULL NUMBERS FROM POLK COUNTY. THE FACT THEY NEEDED TO PULL NUMBERS FROM POLK COUNTY DOESN'T MEAN THEY NEED TO SPLIT THE CITY OF LAKE LAND. THERE IS NOTHING UNIQUE ABOUT THE CITY OF LAKE LAND THAT PRECLUDES THE CITY AS A WHOLE BEING INCLUDED IN ONE DISTRICT.

THAT IS OUR POINT.

>> POPULATION CENTER OF POLK COUNTY, LAKE LAND?

I WOULD IMAGINE, BARTOW AND POLK COUNTY ALSO?

>> LAKE LAND, YOUR HONOR. APPROXIMATELY 97,000 CITIZENS.

>> SO, I MEAN IF YOU'RE LOOKING FOR POPULATION TO DISTRIBUTE IT, THAT SEEMS LIKE TO ME THE BEST PLACE IN POLK COUNTY THAT YOU WOULD FIND POPULATION.

>> AND THE TWO POINTS THAT THE COUNSEL FOR THE SENATE MADE TODAY REALLY SUPPORTS THE ARGUMENTS THAT WE MADE IN OUR BRIEF.

THEY STATE THAT THEY MADE DECISIONS BASED UPON EFFECTIVE REPRESENTATION.

THEY STATE THEY MADE DECISIONS BASED UPON PROTECTING COASTAL FROM RURAL YET THOSE TWO

ARGUMENTS ARE THE ARGUMENTS
THAT WE'RE MAKING.

BIFURCATING THE CITY OF
LAKELAND WHICH IS THE LARGEST
POPULATION CENTER IN POLK,
LAKELAND CITIZENS HAVE HAD
THEIR EFFECTIVE REPRESENTATION
DILUTED.

THE BULK OF THE POPULATION IS
IN A PLACE IN THE DISTRICT THAT
EXTENDS ALL THE WAY DOWN TO THE
COASTAL AREAS OF MANATEE
COUNTY.

THEIR VOTES WILL BE DILUTED IN
COMPARISON TO WHERE THE
MAJORITY OF THE POPULATION IS
IN THAT COUNTY.

THE MAJORITY OF THE POPULATION
WILL BE CONCERNED WITH COASTAL
ISSUES, NOT INTERIOR ISSUES.

IN LIGHT OF JIMMY BUFFET BEING
HERE LAST NIGHT.

COASTAL JIMMY BUFFET, IN
LAKELAND, CALL IT JOHNNY
CASH. COMPLETELY DIFFERENT.

>> THE PART OF LAKELAND THAT IS
IN THIS PARTICULAR DISTRICT
THAT INCLUDES COASTAL YOU'RE
SAYING MAKES LAKELAND VOTERS,
THE BULK OF THE PEOPLE ARE
SOMEPLACE ELSE IS THAT WHAT
YOU'RE SAYING?

>> PORTION THAT WAS INCLUDED IN
THE DISTRICT THAT EXTENDS DOWN
TO THE COASTAL AREAS OF MANATEE
COUNTY INCLUDED APPROXIMATELY
62,000, 64,000 CITIZENS OUT OF
THE 97.

SO YOU HAVE 64,000 COMBINED OUT
OF 470, VERSUS HAVING 97,000 IN
A DISTRICT OF 470.

WHICH IS YOUR MAGIC NUMBER FOR
THE EQUAL POPULATION IN YOUR
DISTRIBUTES.

AND THERE WAS NO RATIONAL
BASIS.

WE LOOK AT OTHER AREAS AROUND THE STATE.

IN INSTANCES WHERE YOU HAVE CITIES ABUTTING CITIES ABUTTING CITIES,

THAT IS DIFFERENT SITUATION.

AT SOME POINT YOU WILL HAVE TO SPLIT A CITY PARTICULARLY IN AN URBAN AREA BECAUSE YOU DON'T HAVE UNINCORPORATED AREA THAT SURROUNDS THE CITY.

>> IN 2002, OR SINCE THEN HAS LAKELAND BEEN IN ONE DISTRICT?

>> NO, IT WAS SPLIT IN THREE IN '02.

>> SO THEY SAY YOU'RE DOING BETTER.

MAYBE BY 2023 YOU CAN GET INTO ONE.

>> THEY SAY WE'RE DOING BETTER BUT IN '02 THERE WASN'T CONSTITUTIONAL REQUIREMENT TO UTILIZE THE POLITICAL BOUNDARIES AND IT DOESN'T SAY YOU DO BETTER IN '02 BUT STILL SPLIT A CITY YOU'RE OKAY.

>> I UNDERSTAND THAT YOU DON'T HAVE TO SHOW IMPROPER MOTIVE BUT A FACIAL CHALLENGE, THIS IS AN AREA THAT SENATOR DOCKERY REPRESENTED.

SHE IS NO LONGER IN.

IS THERE ANYTHING ON THE RECORD THOUGH THAT POINTS TO ANY IMPROPER MOTIVE?

AGAIN THEY MAY NOT HAVE GOTTEN IT EXACTLY RIGHT OR MAYBE YOU SAY THEY GOT IT WRONG BUT LOOK TO SEE, WELL, IS THERE SOMETHING THAT THEY DID FOR AN IMPROPER REASON?

IS THERE ANYTHING IN THE RECORD THAT WOULD SUPPORT THAT?

>> FIRST, YOUR HONOR, I DON'T BELIEVE THAT SECTION 21 REQUIRES THAT THERE BE AN

IMPROPER PURPOSE TO FIND A VIOLATION THAT A POLITICAL BOUNDARY WASN'T UTILIZED. I DON'T SEE ANYTHING IN THE RECORD THAT INDICATES THERE WAS AN IMPROPER PURPOSE BUT THERE IS NOTHING IN THE RECORD THAT JUSTIFIES SPLITTING LAKELAND.

MY TIME IS UP, THANK YOU.

>> MR. ^CHIEF JUSTICE, MAY IT PLEASE THE COURT.

I'M PAUL SMITH REPRESENTING THE LEAGUE OF WOMEN VOTERS AND COMMON CAUSE AND THE COUNCIL LA RAZA.

10 YEARS AGO THE LEGISLATIVE

>> I DON'T SEE THAT AS BEING INDICATIVE INTO THE INTENT.

TO START, THERE WAS GOOD FAITH IN PART OF THE LEGISLATURE.

BUT THE PART OF THE PARTISAN IMBALANCE AND SAY THAT THE STATE -- THEIR MORE REGISTERED DEMOCRATS THAN REPUBLICANS.

YET, IN THE LAST RACES, STATEWIDE RACES, REPUBLICANS HAVE WON MOST, ALMOST ALL OF THE STATEWIDE RACES IN 2010.

AND JUST AS LEWIS SAID, THE PROBLEM IS AND I THINK IT WAS -- HAS BEEN DEMONSTRATED IS THAT THE DEMOCRATS ARE CONCENTRATEED.

I DON'T THINK ANYONE WOULD DISPUTE IT IN SOUTH FLORIDA.

SO NO MATTER WHAT YOU DO, YOU'RE NOT GOING TO MAKE DISTRICTS ONE AND THREE DEMOCRAT.

AGREE WITH THAT?

>> THAT I AGREE WITH.

>> AND THERE ARE MANY PARTS OF THE STATE THAT YOU, YOU KNOW, THAT AND THAT'S NOT I KNOW THAT YOUR GROUP HAS BEEN A PROPONENT OF GOOD GOVERNMENT, I APPRECIATE.

NOT THE DEMOCRATIC PARTY.
I APPRECIATE THAT WHERE YOU'RE
COMING FROM IS YOU WANT THIS
PROCESS TO BE FAIR.

SO IN THAT REGARD, THOUGH, MY
CONCERN FOR USING PARTISAN
IMBALANCE IS WHAT JUSTICE LEWIS
IS SAYING.

HOW CAN YOU REALLY SAY THAT
WHEN, IN FACT, THE DEMOCRATS ARE
CLUSTERED IN CITIES AND BOTH IN
AROUND ORLANDO BUT MOSTLY IN
SOUTHEAST FLORIDA.

>> HERE'S WHAT WE PUT IN THE
RECORD.

WE PUT IN EVIDENCE HOW DO THESE
DISTRICTS FUNCTION IF YOU SPLIT
THE VOTE BY 50/50.

THE OBAMA AND McCAIN RESULTS.
CLOSE ELECTIONS YOU HAVE A 50/50
RESULT.

IT'S AN F-1 HOW DO THE DISTRICTS
SOLIDIFY?

>> I THINK THE POINT IS WHAT
ABOUT ALL OF THOSE OTHER
STATEWIDE ELECTIONS THAT WERE
VERY DIFFERENT?

YOU'VE PICKED CERTAIN ELECTIONS
THAT SHOW SOMETHING ELSE BUT THE
REALITY IS THERE ARE A LOT OF
OTHER STATEWIDE ELECTIONS.

I REJECT THE WHOLE PREMISE OF
THIS BECAUSE OF THE NOTION THAT
HAS BEEN ARTICULATED ABOUT THE
WAY THE VOTERS ARE KIND OF
RESIDENTIALLY MADE DECISIONS
ABOUT WHERE THEY'RE GOING TO BE
AND GOING TO RESULT IN A
DIFFERENT ALLOCATION THAN YOU
WOULD HAVE STATEWIDE.

BUT YOUR ARGUMENT ABOUT
STATEWIDE PERFORMANCE SEEMS TO
ME TO BE FALLACIOUS BECAUSE YOU
PICKED TWO RACES, SAID HERE WHEN
THERE ARE A LOT OF OTHER RACES
WHERE THE REPUBLICANS WANT.

>> YOU'RE MISUNDERSTANDING ME,
YOUR HONOR.

WE ARE NOT SAYING THAT WE THINK
THAT THE DISTRICTS -- THAT THE
MAP SHOULD PRODUCE 50/50
OUTCOMES, THE REASON I WANT
POINTING TO A 50/50 TEST IS
BECAUSE THAT'S HOW INHERIT THE
MAP.

IF THEY SPLIT 50/50 NOT HOW THEY
USUALLY VOTE HOW MANY GAIN AT A
50/50 POINT.

THEY GET 24 SENATE SEATS.

THERE'S THAT MUCH ADVANTAGE
BUILT INTO THE MAP WHETHER THEY
VOTE 50/50.

NOW, PART OF THAT IS THE
GEOGRAPHY.

I CAN ADDRESS THAT, I'M SORRY,
YOUR HONOR.

>> THERE ARE 3 MILLION PEOPLE
IN THE STATE OF FLORIDA
REGISTERED TO VOTE BUT NOT
REGISTERED TO EITHER REPUBLICAN
AND DEMOCRAT.

THAT'S 25% OF THE TOTAL.
HOW THEY'VE BEEN CONSIDERED
ANYWHERE --

>> THE WAY OUR ANALYZE WORK IS
HOW WE LOOK AT HOW PEOPLE VOTE
PREPRECINCT TO PREDICT HOW THE
UNIT OF GEOGRAPHY WILL PREDICT
IN THE FUTURE NOT HOW THEY
REGISTER.

I THINK REGISTRATION IS A
REASONABLY UNINFORMATIVE THING
COMPARED TO, IT CAN HELP YOU AND
ANALYZE THE DISTRIBUTIONS BUT
NOT REALLY PREDICTIVE OF
ANYTHING.

>> WHERE'S THE ANALYSIS THAT'S
HOW THE PRESIDENTIAL RACE
PERFORM WOULD TRANSLATE INTO A
SENATE STATE RACE?

>> THE EXPERTS WOULD SAY WE USE
LOTS OF THE PRESIDENT RACES BUT

YOU HAVE TO USE A STAID WIDE
RACE.

>> ANY HISTORICAL BASIS HERE IN
FLORIDA?

>> YOUR HONOR, HISTORIC BASIS
FOR WHETHER PEOPLE AT A
PARTICULAR PLACE WILL VOTE
DEMOCRATIC BOTH IN A STATEWIDE
ELECTIONS AND LOCAL ELECTIONS?
ABSOLUTELY.

I THINK ANY --

I DON'T HAVE THE ANALYSIS DONE.
WE DIDN'T DO THAT.

BUT THERE'S A WAY YOU DO THAT.
YOU CORRELATE PRECINCT BY
PRECINCT AND FIND HIGH
CORRELATIONS.

>> GOING BACK TO THE
FUNDAMENTAL QUESTION.
IF THIS IS NOT ONE OF THE
ELEMENTS THAT WE ARE TOLD BY
ORGANIC LAW TO CONSIDER AND USE,
THEN, I MEAN, WE'RE TALKING
ABOUT A NONISSUE, AREN'T WE?

>> YOUR HONOR, LET ME MOVE TO
THE SECOND POINT I WANT TO MAKE
ABOUT THE SENATE MAP.

THESE OUTCOMES ARE NOT AN
ACCIDENT.

FOR ONE THING YOU HAVE TO LOOK
AT WHAT THEY DID ON INCUMBENTS.
THAT IS SO CLEAR THAT IN THIS
PROCEEDING YOU HAVE TO CONCLUDE
THAT THEY ACTED WITH A --
PRIMARY FOCUS ON FAVORING IMCUP
EVERY SINGLE ONE OF THEM
RECEIVED HIS OR HER OWN DISTRICT
LEANING IN THE DIRECTION OF
THEIR PARTISAN VIEWS.

THEY'RE PARTISANS.

BASICALLY EACH OF THEM GOT THEIR
OWN SAFE DISTRICT TO RUN IN.

THE CHANCES OF THAT HAPPENING BY
COINCIDENCE ARE AS CLOSE TO 0 AS
ANYTHING COULD BE
STATISTICALLY.

NOT ONLY GET THEIR OWN DISTRICT
BUT THOSE 29 DISTRICTS KEPT 69%
OF THEIR PRIOR TERRITORY, THE
OTHER 11 DISTRICTS KEPT 50%.
THEY WERE FOCUSING ON KEEPING
THOSE DISTRICTS THE SAME FOR THE
29 NONTERM LIMITED INCUMBANCE.
SENATOR TALKED AT THE HEARINGS
ABOUT HOW THEY STAFF WENT FROM
SENATOR AND SENATOR AND SAID
WHAT WOULD YOU LIKE YOUR
DISTRICT TO DO?
HAVING TROUBLE HERE.
MAY HAVE TO MOVE IT OVER HERE.
WOULD THAT WORK OR RATHER IT
WENT SOUTH?
AND THEY SAID THE SENATE SAYS
WELL WE DIDN'T HAVE POLITICAL
DATA WE WERE USING IN THAT
DISCUSSION SENATOR BY SENATOR
BUT THAT DISCUSSION OCCURRED AND
THE SENATORS KNOW WHICH
TERRITORY THEY WOULD RATHER HAVE
IF THEY HAVE TO MOVE.
>> IS THIS RELATIVE TO YOUR
ARGUMENT ABOUT DISTRICTS --
ONE AND THREE OVER IN THE
PANHANDLE?
>> WELL, CERTAINLY, YOUR HONOR
I DON'T THINK THERE'S ANY DOUBT
THAT THOSE TWO DISTRICTS WERE
KEPT ALMOST IDENTICAL TO HAD
THEY HAD IN THE PAST BECAUSE
THEY WANTED TO KEEP THEIR
TERRITORY.
>> WHAT'S THE PROBLEM --
WHAT VIOLATION, POINT TO ME THE
VIOLATION OF ANY STANDARD THAT
THE DISTRICTS ONE AND THREE
HAVE.
BECAUSE BASICALLY AS I SEE THE
OTHER MAP, IT'S MAKING THOSE
DISTRICTS VERTICAL AS A OPPOSED
TO HORIZONTAL.
ONE DISTRICT ONE IS ALL ALONG
THE COAST.

AND COVERS, YOU KNOW, FOUR OR FIVE COUNTIES.

AND THEN DISTRICT THREE IS ALONG THE NORTHERN PART AND COVERS BASICALLY THE SAME COUNTIES MAYBE WHAT THE COUPLE OTHERS IN IT.

>> RIGHT.

>> SO WHAT'S WRONG WITH THAT IF IT DOESN'T VIOLATE ANY OTHER PROVISIONS SECTION 21.

>> IT WOULDN'T IF DIDN'T BUT IT DOES.

A VERY IMPORTANT PIECE OF THE SECOND TIER PROVISION IN SECTION 21 IS THE COMPACTNESS REQUIREMENT.

WHAT YOU HAVE AS A RESULT OF THE WAY THEY DIVIDED THOSE DISTRICTS IS PARTICULARLY DISTRICT ONE IS 150 MILES ALONG AND FEW HUNDRED MILES WIDE.

EXTREMELY COMPACT.

AND WHAT OUR MAP SHOWS IS YOU CAN, OBVIOUSLY, DO TWO FAIRLY WIDE RECTANGLES KEEPING COUNTIES WHOLE.

BUT THAT IS A NONCOMPACT DISTRICT.

A LOT WHAT HAPPENS IN THE SENATE MAP IS TO IGNORE COMPACTNESS.

SIMPLY SAY WE WOULD LIKE TO NOT HAVE COMPACTNESS BE A REQUIREMENT ON US.

SO YOU LOOK --

>> SO YOU'RE SAYING THAT ALL OF THE TIER ONE CRITERIA CAN BE MET.

AND COMPACTNESS IF YOU DO THIS MAP VERTICAL.

>> ABSOLUTELY, THE WAY THEY DO THE MAP COULD HAVE DONE THE SENATE MAP AND MUCH MORE COMPACT.

>> WHAT'S STANDARD WHAT YOU
ARTICULATE TO GOVERNOR THE
COMPACTNESS EVALUATION?
IS THERE A SPECIFIC NUMERICAL
TEST YOU WOULD SAY THIS IS THE
TEST TO LOOK AT, AND IF IT GOES
BELOW OR ABOVE A CERTAIN
THRESHOLD IT'S NOT COMPACT WERE
OR IS IT THAT COMBINED WITH A
VISUAL EXAMINATION.

WHAT SPECIFICALLY.

HOW WOULD YOU ARTICULATE IT?
AS THE STANDARD --

>> THERE ARE TWO RECOGNIZED
TESTS.

THIS IS THE UNITED STATES
SUPREME COURT POINTED OUT IT'S
THE ROOP TEST AND POLLS BE
POPPER.

THOSE ARE THE ONES THAT ARE
USED.

I THINK YOU CAN COMBINE CERTAIN
AMOUNT OF VISUAL UNDERSTANDING.
THERE'LL BE SITUATIONS IN WHICH
I THINK THERE'S TENSION BETWEEN
COMPACTNESS AND FOLLOWING CITY
LINES LIKE THE CITY LINES OF
LAKELAND ARE NOT COMPACT.
SAW THAT IN A MAP.

IN SOME SITUATIONS --

>> WHAT ABOUT TENSION BETWEEN
THAT AND FOLLOWING OTHER
GEOGRAPHICAL BOUNDARIES.

>> I SUPPOSE IT COULD BE.

NOT READY TO DISAGREE.

I DON'T THINK SHOULD BE AT ANY
CREEK.

>> WELL STIPULATE THERE MIGHT
BE SOME THINGS THAT WOULD BE
ASSERTED TO BE A GEOGRAPHICAL
BOUNDARY THAT WE WOULD DECIDE
THAT WOULD NOT BE.

IS THERE ANYTHING IN THE
AMENDMENT THAT THE PEOPLE
ADOPTED THAT PRIVILEGES THE
COMPACTNESS STANDARD OVER IF THE

ABILITY OF THE LEGISLATURE TO FOLLOW GEOGRAPHICAL AND POLITICAL BOUNDARIES.

>> ABSOLUTELY EQUAL TO ALL OF THOSE THINGS.

THERE WILL BE SITUATIONS AND WE HAVE CLEAR EXAMPLES OF IT IN THE SENATE MAP WHERE THEY ARE LOW ON COMPACTNESS AND THERE'S NO AVAILABLE ARGUMENT THAT IT WAS DONE TO KEEP GEOGRAPHICAL UNITS TOGETHER OR BECAUSE THEY WERE EQUALIZING POPULATION OR BECAUSE OF TIER ONE OR FEDERAL LAW. THERE SIMPLY AREN'T.

IF YOU LOOK AT THE DISTRICTS IN ORLANDO THAT MR. CARVIN WAS DISCUSSING HE MADE A CLAIM THAT THEY WERE REQUIRED BY THE VOTING RIGHTS ACT.

THAT WAS UNTRUE IN THE MATTER OF LAW.

YOU CAN TRIAL THAT JUDGMENT. THE AFRICAN-AMERICAN DISTRICT WHICH YOU MENTIONED DISTRICT 12, WAS 33% AFRICAN-AMERICAN VOTING AGE POPULATION DRAWN TEN YEARS AGO.

THEY INCREASED IT BY MAKING IT NONCOMPACT TO 40% VOTING AFRICAN-AMERICAN VOTING AGE POPULATION.

THE VOTING RIGHTS ACT DOES NOT COME INTO PLAY UNDER THE SUPREME COURT'S BAR SITUATION.

SO THAT DISTRICT CANNOT BE REQUIRED BY THE VOTING RIGHTS ACT.

MAY BE A GOOD IDEA.

EVERYBODY THINKS THERE SHOULD BE AN AFRICAN-AMERICAN DISTRICT.

WE DREW IT IN A COMPACT WAY.

NO IT CROSSES BETWEEN ORANGE COUNTY SEMINAL COUNTY.

SOUTH OF THERE THEY DON'T HAVE THE LEVEL OF HISPANIC POPULATION

THAT WOULD TRIGGER THE VOTING RIGHTS ACT WHICH IS 50% CITIZEN VOTING AGE POPULATION.

THEY DON'T HAVE THERE EITHER.

>> YOUR OPPOSITION DEPOSITS THAT WHAT WE'RE LOOKING AT IS EFFECTIVE REPRESENTATION. AND WHEN WE LOOK ANOTHER DISTRICTS ONE AND THREE IN THE PANHANDLE THAT THIS IS AN EFFECTIVE REPRESENTATION THAT THE DIFFERENT INTEREST FOR THE COASTAL AREAS, VACATION, TOURISM ORIENTED, AND WITH THE MORE RURAL AREAS HOMES AND SOME OF THOSE OTHER COUNTIES UP THERE, WHAT IS YOUR RESPONSE?.

>> I REALIZE IT'S NOT A CRITERIA, RIGHT IN THE CONSTITUTION. BUT THE PRINCIPLE THAT WE'RE LOOKING AT.

>> THAT'S THE SENSE OF MY RESPONSE JUSTICE LEWIS. MIGHT BE A GOOD IDEA AS A MATTER OF POLICY. BUT THE REASON THE VOTERS SUPPORTED THEM IS TO PUT A DISCIPLINE ON THE LEGISLATURE. SO FOR THEM TO BE ABLE TO COME INTO THE COURT AND SAY, WELL WE DIDN'T CARE ABOUT COMPACTNESS HERE BECAUSE HE WOULD BE BETTER FOR THE SHORELINE TO BE BETTER BECAUSE THEY HAVE MORE IN COMMON THAN THE RURAL PEOPLE. WE'RE GOING TO DILUTE THE IMPOSITION OF SOME -- RELATIVELY IMPORTANT HANDCUFFS ON THE LEGISLATURE. THIS IS IT BE THE PEOPLE TELLING THE LEGISLATURE YOU CAN'T KEEP DOING IT THE SAME WAY. AND SO WE'RE GOING TO PUT RULES ON YOU THAT TRY TO DISCIPLINE THAT.

I THINK IT'S IMPORTANT THAT THOSE BE ENFORCED AS WRITTEN AND NOT WATERED DOWN BY GOOD GOVERNMENT ARGUMENT SOMEBODY ELSE MIGHT MAKE ABOUT ANOTHER ARGUMENT IN THE AMENDMENT.

>> HOW ABOUT THE TIER TWO STANDARDS.

AMONG TIER TWO THEY'RE ALL EQUAL.

AND THEN THERE MAY BE TENSION.

>> SOMETIMES.

>> AN EXAMPLE IN THE HOUSE BY HAVING -- HAVING THE CONSISTENT COUNTY BOUNDARIES THERE WAS A POPULATION DEVIATION.

DID YOU ACCEPT SOMETHING LIKE FOLLOWING COUNTY BOUNDARIES AS A GOOD THING THAT MAY, I MEAN, AN IMPORTANT THING AS A RECOGNIZED BOUNDARY MAY AFFECT EQUAL POPULATION?

>> I ABSOLUTELY DO THINK THAT, YOUR HONOR.

>> YOU SAID THEY'RE ALL EQUAL. I'M QUESTIONING AND READING TIER TWO.

IT SAYS POLITICAL, JUST MAKE SURE BECAUSE I WANT TO MAKE SURE I HAVE THIS.

IT SAYS THAT IT HAS TO -- THAT THEY ARE TO USE POLITICAL EXISTING POLITICAL AND GEOGRAPHICAL BOUNDARIES.

EXISTING POLITICAL --

WE ARE FEASIBLE BUT THAT IT SAYS FOR COMPACTNESS REQUIRES THE DISTRICT'S SHALL BE COMPACT.

NOW, TO ME SHALL UNDER PLAIN ENGLISH IS A COMMAND THAT IS UNLESS IT VIOLATES THE FIRST -- UNLESS IT'S NECESSARY FOR TIER ONE, COMPACTNESS ACTUALLY IS THE FIRST OF THESE TIER TWO REQUIREMENTS.

CAN YOU EXPLAIN, OTHERWISE IT

DOESN'T MEAN ANYTHING TO SAY
SOMETHING SAYS WE'RE FEASIBLE.
IT DOESN'T SAY COMPACT WE'RE
COMPACT UNLESS YOU WANT TO
RESPECT COMMUNITIES OF INTEREST.

>> RIGHT, AND I DON'T DISAGREE
WITH WHAT YOU SAY.

EVERY DISTRICT HAS TO HAVE A
REASON WHY IT'S NONCOMPACT.

>> BUT THE REASON HAS TO BE TO
ME SOMETHING IN TIER ONE, NOT A
CHOICE, AND YOU KNOW WE'RE GOING
TO BE INTERPRETING THESE
PROVISIONS FOR THE FIRST TIME.

I WANT TO MAKE SURE IF I MISSED
SOMETHING, AS TO THAT COMMAND
SHALL BE COMPACT.

>> THE ONLY THING I WOULD ADD
IS THERE'S GRAY AREAS WHERE
THINGS ARE A LITTLE LESS COMPACT
BECAUSE THEY FOLLOW THE COUNTY
LINES OUGHT TO BE TOLERATED FOR
WHAT YOU TOLERATE POPULATION
DEVIATION.

WHEN SOMETHING IS REALLY
NONCOMPACT I THINK THAT'S A
VIOLATION UNLESS IT'S REQUIRED
BY FEDERAL LAW OR BY SOMETHING
IN TIER ONE.

THAT'S ABSOLUTELY RIGHT.

>> ON ONE AND THREE WHEN YOU
FOLLOWED COUNTY LINES AND DRAW
IT VERTICALLY THAT THE TWO GET
THEIR OWN DISTRICTS, IS THAT --
I DON'T KNOW THAT.

>> COME OUT THAT WAY.

WE DIDN'T LOOK AT INCUMBENCY
HAMMED TO NOT HAVE THEM PAIRED.
THAT WASN'T AN ISSUE WE WERE
FOCUSED ON.

NOT INTERESTED IN FORCING THEM
TO BE PAIRED BUT INTERESTED IN
FOLLOWING THE RULES OF THE
VOTERS OF THE STATE OF FLORIDA.

>> YOUR ARGUMENT ON ONE AND
THREE THAT SIMPLY THEY CANNOT

USE AS AN EXCUSE COMMUNITIES OF
INTEREST TO SACRIFICE
COMPACTNESS FOR THAT.
BUT THEN ON POLITICAL AND
GEOGRAPHIC BOUNDARIES,
MR. CARVIN SAYS THAT THEIR
GEOGRAPHIC HAS EQUAL STATURE
WITH WITH POLITICAL BOUNDARIES
AND A THAT THEREFORE, GEOGRAPHIC
BOUNDARIES CAN PROVAİL IF THEY
WANT THEM TO.

>> LET ME INTERSECT A COMMENT.
I THINK IT'S IMPORTANT WHAT
WE'RE DOING HERE, WHAT THE COURT
NEEDS TO ESTABLISH WHAT THESE
THINGS MEAN SO IT'S NOT UP TO
THE LEGISLATURE TO DECIDE WHAT
THEY MEAN.

WHAT YOU HAVE HERE NOW IS A
SENSE INTERPRETATION FROM THE
HOUSE OF REPRESENTATIVES SAYING
WE TRY TO KEEP COUNTIES HOLE.
THE INTERPRETATION BY THE SENATE
WHICH IS DESIGNED TO NULLIFY THE
REQUIREMENT.

IF YOU CAN GO FROM CITIES TO
TOWN BOUNDARY TO STREAM YOU CAN
DRAW ANY NON-COMPACT, ANY
DISTRICT YOU WANT.

DOESN'T REFLECT ANY KIND OF A
SENSE OF COMMUNITY THAT THAT
REQUIREMENT MAKES NO SENSE.
SO I WOULD REALLY URGE YOU TO
SAY LET'S NOT READ THAT, THIS
LANGUAGE IN A WAY THAT WILL
ELIMINATE CONCERNS ABOUT WHAT
THIS WAS REALLY ABOUT.

WHICH WAS LET'S TRY --

>> ABOUT THE COMMUNITY.

>> KEEP THE CITIES AND COUNTIES
WHOLE IF YOU CAN.

THAT'S WHAT IT'S ABOUT, YES,
YOUR HONOR.

>> HOW WOULD YOU --

>> BECAUSE THEY HAVE A SENSE OF
ARGUMENT.

>> YOUR ARGUMENT HAS BEEN PRESENTED THIS MORNING IS THAT THE OTHER TYPES OF THINGS SHOULD BE IN A CATEGORY OF GEOGRAPHIC FEATURES.

WHAT IS YOUR POSITION WITH REGARD TO THE PARAMETERS OF GEOGRAPHIC BOUNDARIES IN OUR CONSTITUTION THAT THIS COURT SHOULD CONSIDER?

>> YOU KNOW, OBVIOUSLY YOU WERE WRITING ON A CLEAN SLATE HERE. I WOULD INTERPRET THAT TO FOCUS ON COUNTY AND CITY BOUNDARIES.

>> WAIT A SECOND. SPECIFICALLY REFERS TO POLITICAL AND GEOGRAPHIC BOUNDARIES. SO I DON'T UNDERSTAND HOW YOU CAN SAY THAT GEOGRAPHICAL IS MEANT REFER TO PRIMARY TO POLITICAL.

>> I WAS GOING TO ADD, YOUR HONOR, THAT THERE ARE SITUATIONS IN WHICH THEY'RE GOING TO BE GEOGRAPHIC FEATURES THAT FUNCTION AS DIVISIONS BETWEEN COMMUNITIES.

LIKE A SIGNIFICANT RIVER THAT PEOPLE DOESN'T HAVE A BRIDGE AT THAT PLACE.

IF THEY WANT TO USE THAT AND EXPLAIN THAT'S WHAT WE DID THAT WOULD BE FINE TOO.

BUT THEY SHOULDN'T BE ABLE TO PICK ANYTHING ON THE MAP AND SAY THAT'S WHY WE DO THE LINE THERE BECAUSE WHEREVER YOU DRAW A LINE THERE'S SOMETHING.

>> ONE WERE TO EXPRESS WHEN THIS CONCEPT POLITICAL GEOGRAPHICAL BOUNDARIES, WHAT DO YOU SUGGEST AS THE FINDING PARAMETERS THAT CAN BE STATED IN A REALISTIC WAY THAT HAVE AN UNDERSTANDABLE IMPACT?

>> I THINK THE GOAL PRIMARILY

OUGHT TO BE KEEPING THEM WHOLE
IN THE WAY THE HOUSE DID.
WHEN THEY'RE US GEOGRAPHIC
BOUNDARIES NOT POLITICAL WITH
POLITICAL BOUNDARIES OUGHT TO BE
THINGS IN GOOD FAITH EFFORTS SAY
THESE WERE -- WE VIEW THIS AS A
REAL BOUNDARY NOT A FEATURE.
BUT DIVIDES COMMUNITIES IN SOME
WAY.

AS SHE SAID ABOUT BEING ABLE TO
MAKE A GOOD FAITH SHOWING THAT
WE TRIED TO DO SOMETHING THAT
MAKES SENSE.

AND THE SENATE IS NOT --
WAY OF APPLYING THIS DOESN'T DO
THAT.

THIS SAYS WE CAN WANDER ALL OVER
THE PLACE.

>> IN YOUR MAP, AND I MAY BE
WRONG ON THIS, SO CORRECT ME IF
I AM.

THE SENATE DISTRICT 13 IS DRAWN
BY THE SENATE, IT WAS -- THEY
CREATED A MAJOR, MINORITY,
HISPANIC DISTRICT.

>> THEY SAY MAJORITY MINORITY
IT'S 40% OF VOTING AGE
POPULATION BECAUSE THE HISPANICS
ARE NOT CITIZENS.

BUT I THINK THEY SAY IN THEIR
APPENDIX.

IT'S 45%.

MANY ARE NOT BE CITIZENS.

>> DO YOU IN YOURS, GOES TO
WHAT PERCENTAGE?

>> YOUR HONOR, OURS WHICH IS
DISTRICT 19 ON OUR MAP WHICH YOU
CAN SEE IN THE SOUTHEAST CORNER
OF ORANGE COUNTY, THE FIGURES ON
THAT ONE ARE 43.7% HISPANIC VOTE
POPULATION.

IT'S A LITTLE LOWER, AND,
OBVIOUSLY, REPRESENTATIVE NOT
AGAINST THE CREATION OF A
COMMUNITY --

A PLACE FOR HISPANICS TO BE REPRESENTED IN CENTRAL FLORIDA. THIS IS VERY IMPORTANT. I THINK IT SHOULD BE DONE CONSISTENT WITH THE SECTION 21. AND SO WE HAVE A DISTRICT THERE THAT'S QUITE COMPACT IN ONE COUNTY.

AND WE'LL GROW IF IT'S NOT ALREADY.

BE EFFECTIVE HISPANIC DISTRICT. WILL BE CERTAINLY IN FIVE YEARS WITH THE GROWTH OF POPULATION.

>> THAT IS NOT A DISTRICT THAT -- THAT'S A CREATED DISTRICT.

THAT'S NOT ONE THAT UNDER SECTION FIVE -- SECTION FIVE AS WE HAVE TO BE CONCERNED WITH UNCONSTITUTIONAL RETRODEPRESSION.

>> THERE WAS NO HISPANIC THERE.

>> I BELIEVE WE'RE ALL ON THE SAME PAGE ON THIS BUT I WANT TO MAKE SURE.

THE PURPOSE OF THE SECTION ONE, TIER ONE, REQUIREMENT OF NOT THE DISTRICT'S SHALL NOT BE DRAWN WITH THE INTENT OF RESULT OR DENYING OR ABRIDGING EQUAL OPPORTUNITY OF RACIAL OR LANGUAGE MINORITIES TO PARTICIPATE IN THE POLITICAL PROCESS.

IS TO PUT INTO OUR CONSTITUTION THE EQUIVALENT OF SECTION TWO FOR THE FIRST PRONG, AND SECTION FIVE FOR THE SECOND PRONG.

IS THAT HOW YOU UNDERSTAND IT? IT'S CLEAR THERE'S SECTION FIVE IS WHAT'S BEING INCORPORATED ON THE SECOND PRONG.

GET TO THE SECTION TWO QUESTION IN A MINUTE.

I THINK IT'S IMPORTANT TO UNDERSTAND WHAT THAT MEANS.

IT DOESN'T MEAN YOU CAN NEVER
LOWER THE MINORITY PERCENTAGE IN
BESTING MINORITY DISTRICT.
MEANS YOU LOOK AT IT
FUNCTIONALLY, AND MAKES --
ASCERTAINS.
THIS ISN'T LAID OUT FOR EXAMPLE
A COMMENT.
IN OUR BRIEFS.
YOU DO IT THE WAY THE JUSTICE
DEPARTMENT DOES IT.
IF DISTRICT IS 55%
AFRICAN-AMERICAN YOU MAY DRAW A
DISTRICT THAT'S 56% STILL BE
CLEARLY A DISTRICT IN WHICH --
>> ISN'T THAT A HIGHLY FACT
INTENSIVE INQUIRY?
IF THEY'VE MADE SUGGESTIONS TO
AVOID A RETROGRESSION.
HOW IF THERE'S NO ADVERSARIAL
TESTING OF EVIDENCE COULD WE
ENTER INTO A JUDGMENT THAT
REQUIRES THAT KIND OF FACT
INTENSIVE ANALYSIS THAT WOULD A
SUBPLANT THE JUDGMENT THAT'S
BEEN MADE BY THE LEGISLATURE.
>> IT MAY BE, YOUR HONOR.
NOT MAKING A CLIMB OF THAT
VIOLATION OF THAT PROVISION.
I WOULD NOTE --
>> BUT YOU ARE ASKING US TO
SECOND GUESS THE LEGISLATIVE
JUDGMENT ABOUT WHAT THEY MUST DO
TO COMPLY WITH THE
CONSTITUTIONAL REQUIREMENT,
AREN'T YOU?
IN PRINCIPLE I WOULD.
THAT WOULD THAT SHOULD BE IN
FORCE.
>> IN PRINCIPLE BUT YOU ARE.
IN PRACTICE ASKING US TO DO THAT
FOR INSTANCE WITH THE RESPECT TO
THE DISTRICT IN --
JACKSONVILLE, THAT AREA.
>> ALL THE WAY DOWN TO DAYTONA.
>> STARTING IN JACKSONVILLE I

SHOULD SAY.

BUT IT'S YOUR POSITION IF I UNDERSTAND IT CORRECTLY, THAT THAT DISTRICT SHOULD NOT BE DRAWN THE WAY IT IS DRAWN.

>> RIGHT, I THINK THAT MAY BE ONE OF THE MORE FACT INTENSIVE ISSUES WE'VE BROUGHT TO YOUR ATTENTION.

>> OKAY THAT'S A FACT INTENSIVE ISSUE.

BUT HOW CAN WE MAKE THAT EVALUATION ON THAT FACT INTENSIVE SITUATION TO SUGGEST THE LEGISLATURE HAS MADE. HOW CAN WE ENTER INTO THAT FUNCTIONAL ANALYSIS THAT YOU SAY IS NECESSARY IN THE CONTEXT OF THIS 30-DAY PROCEEDING WHERE WE HAVE NO EVIDENTIARY PROCEEDING?

>> I WOULD NOTE THAT'S WHAT THE DEPARTMENT OF JUSTICE DOES IN A NONADVERSARIAL ADMINISTRATIVE REVIEW BASED ON THE KINDS OF EXPERT EVIDENCE THAT WE SUBMITTED TO YOU, AND SO IF YOU THINK, YOU KNOW, YOU, OBVIOUSLY, HAVE SOME DISCRETION ABOUT WHETHER YOU WANT TO BECOME THE CIVIL RIGHTS DIVISION OF THE DEPARTMENT OF JUSTICE.

>> THIS IS A COURT.

>> YES, YOUR HONOR.

>> THIS IS NOT A DEPARTMENT OF JUSTICE.

WE FUNCTION AS A COURT FUNCTIONS.

>> ABSOLUTELY.

BUT THAT FUNCTION THAT THEY EXERCISE IS JUDICIAL IN THE SENSE THAT IT'S REPLACING WHAT HAPPENS IN THE DISTRICT OF COLUMBIA LOOKING AT THERE'S AN EQUAL NUMBER IN THE STATE. TO ELECT.

COULD BE SOMETHING YOU COULD DO

OR DEFER.

BUT IN THIS CASE, ONE THING --
YOU NEED TO DO IS MAKE SURE YOU
INTERPRET IT CORRECTLY NOT
REDUCE THE PERCENTAGE.

>> I WANT TO MAKE SURE ON THAT.
IF I'M WRONG ABOUT THIS, YOU'RE
GOING TO CORRECT ME, AND THEN
WE'LL HEAR FROM THE OTHER SIDE.

>> THAT'S WHAT WE'RE HERE FOR.

>> I THOUGHT UNDER SECTION
FIVE, FIRST OF ALL, SECTION FIVE
UNDER THE FEDERAL VOTING RIGHTS
ACT, NOTHING WE'RE GOING TO DO
HERE IS GOING TO SUPERSEDE
SECTION 5 UNDER THE FEDERAL
VOTING RIGHTS, BUT THAT IT
REQUIRES SINCE 2006 AND THE
SUBSEQUENT INTERPRETATION THAT
IF YOU HAVE A MAJORITY MINORITY
DISTRICT PRE-2012, WHICH IS OVER
50% FROM A VOTING AGE
POPULATION, AND A FUNCTIONAL
ANALYSIS THAT YOU CANNOT GO
BELOW THOSE BELOW 50%.

AND YOU SAY NO.

>> NO, THAT'S EXACTLY WHAT THE
FUNCTION OF THE ANALYSIS LOOKS
AT.

WHAT THE JUSTICE DEPARTMENT
DOES, THIS IS LAID OUT AND
CALLED THE DOJ GUIDANCE.
THEY HAVE A CONCEPT THEY GIVE
YOU AN ABILITY TO ELECT OR
DOESN'T.

IN THE 40s RANGE GIVES AN
ABILITY TO ELECT BECAUSE EVERY
DAY, EVERY ELECTION THAT GROUP
WILL BE ABLE TO NOMINATE THEIR
CANDIDATE OF CHOICE AND ELECT
THEIR CANDIDATE OF CHOICE.
THEY WOULD NEVER DENY
PRECLEARANCE FROM DISTRICT 5 TO
46% AFRICAN AMERICAN.
IF THEY'RE CONVINCED THAT'S WHAT
THE FUNCTIONAL ANALYSIS LOOKS

AT.

FOR YOU TO SAY THAT THE PERCENTAGE CAN NEVER GO DOWN IN THOSE DISTRICTS WITH THOSE DISTRICTS WERE A LINCHPIN OF THE VERY MANNER THAT WAS STIPULATED TO TEN YEARS AGO, WOULD BE UNDULY RIDGED.

I THINK IF YOU'RE SENDING THIS BACK TO THE LEGISLATURE TO DEAL WITH THE FACT THAT THEY WERE, OBVIOUSLY, FAVORING IT IS NOT REQUIRED BY SECTION 21. NOT REQUIRED BY SECTION FIVE. IT HAS TO BE LOOKED AT FUNCTIONALLY.

YOU HAVE TO MAKE SURE THAT STATEWIDE AS THE NWAACP SAYS THERE'S AN EQUAL NUMBER OF ABILITY TO ELECT DISTRICTS JUDGED FUNCTIONALLY.

>> NOW, ABILITY THERE'S THREE -- THERE'S THE MAJORITY MINORITY THEN THERE ARE INFLUENCE DISTRICTS AND A COALITION DISTRICTS; IS THAT CORRECT?

>> THAT'S THE WAY THE JUSTICE LOOKS AT IT.

YOU HAVE AN ABILITY TO ELECT YOUR FAVORITE CANDIDATE WHICH VERY OFTEN WILL BE A PERSON OF YOUR OWN RACE OR YOU DON'T. SO AS A THING.

WE'RE TALKING ABOUT DISTRICTS IN WHICH IF THE FAVORED CANDIDATE OF THE MINORITY GROUP PREDICTABLY WILL WIN.

YES OR NO NOT A MATTER OF DEGREE AND OCCURS IN THE 40s FOR AFRICAN-AMERICANS BECAUSE THEY VOTE -- TEND TO VOTE TOGETHER. HIGHER FOR HISPANICS, FOR EXAMPLE.

>> YOU SAID IN THE 40s. BUT NO THE STARS?

JACKSONVILLE HAS THE VOTING AGE POPULATION REDUCED FROM 47% SOME ODD PERCENT IN THE LEGISLATURE'S MAP TO 41% OR NEAR THAT YOU PROPOSAL.

>> 42 I THINK.

>> NOW, OKAY MIGHT BE SAID THAT'S A MARGINAL CHANGE BUT ELECTIONS ARE DECIDED AT THE MARGIN.

I'M STILL GRAPPLING TO UNDERSTAND THE THEORY BY WHICH WE WOULD SECOND GUESS THE LEGISLATURE'S JUDGMENT IN THAT SORT OF ARENA WHERE, OBVIOUSLY, THERE'S SOMETHING AT STAKE THAT THE CONSTITUTION WAS DESIGNED TO PROTECT.

>> YOU MIGHT FIND IT TOO FACT INTENSIVE TO DO IT IN THIS PROCEEDING.

THAT IS NOT SOMETHING THAT A COURT IS INCAPABLE OF ASSESSING. THERE'S ELECTIONS.

>> I'M ASKING ABOUT THIS PROCEEDING.

WHAT WE HAVE TO DEAL WITH IS THE CASES BEFORE US NOW.

>> UNDERSTAND THIS, NOT MY POSITION, NOT MY ORGANIZATION'S POSITION THAT YOU SHOULD DECIDE EVERY POSSIBLE CLAIM BROUGHT AGAINST THESE MAPS IN THESE PROCEEDINGS BUT YOU HAVE EVIDENCE, AND YOU DO HAVE REAL REQUIREMENTS THAT NEED TO BE IN FORCE.

WHEN YOU CAN DETERMINE THAT THOSE HAVE BEEN VIOLATED WITH THE COMPACTNESS REQUIREMENT AND FAVORITE REQUIREMENT.

I THINK YOU SHOULD DO A LITTLE BIT OF A PUN THERE ON THE COURT TO ACT WHEN IT CAN.

I THINK YOU HAVE TO RECOGNIZE THE LIMITS OF WHAT --

DON'T HAVE DISCOVERY.
WE DON'T HAVE CROSS-EXAMINATION
OF EXPERTS.

I ACKNOWLEDGE ALL OF THAT.
BUT THERE IS SUFFICIENT EVIDENCE
HERE AT LEAST WITH RESPECT TO
THE SENATE MAP.

THAT THEY DIDN'T DO THIS IN ANY
WAY TRYING TO BE FAIR.

THE IDEA THAT MR. CARVIN WOULD
SAY THERE'S NO EVIDENCE OF A
UNFAIR RESULT OR INTENT IN A MAP
WHERE THEY GAVE 29 OUR 29 MOST
OF WHOM WHO ARE FROM ONE PARTY.
A SAFE DISTRICT TO RUN IN WE
KNOW ALL 29 WILL GET ELECTED
AGAIN IN 2012.

THAT'S NOT CONSISTENT WITH THE
AMENDMENTS.

I THINK YOU HAVE TO -- WHEN YOU
KNOW THAT, AND EFFECTIVELY
UNDISPUTED YOU HAVE TO TAKE
ACTION IN THIS PROCEEDING OR
THIS WHOLE EXERCISE WE'RE GOING
THROUGH WILL LOSE ITS MEANING
WHICH I THINK THE PEOPLE WERE
COULD WANTING ON THIS COURT TO
TAKE ACTION WHEN EVERYBODY KNEW
WHAT REALLY HAPPENED HERE WITH
THAT'S WHAT WE HAVE PARTICULARLY
WITH RESPECT TO THE SENATE IN
THE HOUSE.

>> YOU AGREE IN THE PAST, THE
NUMBERS HASN'T BEEN ONE OF THE
MATTERS THAT WE HAVE BEEN
CONCERNED WITH.

YET, NOW ONE OF YOU ON YOUR SIDE
RAISES THE SECTOR OF THAT BEING
A PROBLEM.

AND THE RESPONSE IS NO.

THIS IS NOT THE DRAWING OF ANY
DISTRICTS.

IT IS SIMPLY THE APPLICATION OF
A NUMBER, AND THIS IS THE
DISTRICT EFFECT OF WHAT'S
HAPPENED WITH REGARD TO THE

ELECTIONS.

AND SOMEBODY IS GOING TO HAVE A TWO-YEAR TERM ET CETERA, ET CETERA, AND SO ON.

WHY IS HE NOT CORRECT IN HIS ANALYSIS OF THIS THAT THAT ASPECT HAS NOT CHANGED?

>> WELL IT'S A TEXTURAL ISSUE IF YOU SEE THE NUMBERS ON THE MAP.

IT'S IN THE PURVIEW; I THINK THAT'S A CLOSE QUESTION TEXTURALLY.

THE MAIN REASON WE WERE INTRODUCING THAT INTO THE DISCUSSION JUSTICE LEWIS IS THAT IT'S IT'S A POWERFUL PIECE OF EVIDENCE THAT THE MOTIVATING FACTORS, THE THINGS THAT WERE DRIVING THE SENATE PROCESS WERE MAKING SURE EVERY SENATOR HAD A DISTRICT RUN-IN.

KEPT MOST OF THEIR TERRITORY, AND THEY ALL GET A CHANCE TO BE THERE FOR TEN YEARS.

EXCEPT FOR SENATOR LATVALA.

THAT IS NOT A FREE PROCESS.

THIS IS A PROCESS WHERE EVERYBODY GOT TO DISCUSS WHAT THEY WANTED.

GOT THEY WANTED TO THE EXTENT THEY COULD.

THIS IS THE SAME PROCESS WE'VE BEEN LIVING WITH IN THIS STATE FOR MANY, MANY YEARS.

THEY DIDN'T TRY TO DO IT ANY DIFFERENTLY IN THE SENATE SIDE.

THE HOUSE DESERVES A CONSIDERABLE AMOUNT OF CREDIT.

OUR MAIN CONCERN IS WE DIDN'T LOOK AT POLITICS.

SHOULD AVERT OUR EYES.

THAT SHOULD BE THE RIGHT WAY TO HANDLE IT, OUR POSITION IS YOU SHOULD HAVE TO LOOK AT IT AND TRY TO WHERE POSSIBLE WITHIN THE

CONSTRAINTS OF THIS STATE WHICH ARE CONSTRAINTS, BE EQUITABLE TO THE PARTIES.

>> I THOUGHT THE HOUSE IN THEIR SOFTWARE THAT'S HOW WE WERE ABLE TO OBTAIN POLITICAL DATA THAT THEY DID UNLIKE THE SENATE ACTUALLY SING UNDERSTAND THE DOJ GUIDELINES AND THOSE ARE BUILT INTO THEIR SOFTWARE, ISN'T IT? POLITICAL DATA.

>> MY UNDERSTANDING THEY HAD THE DATA IN THEIR SOFTWARE AND THE SENATE SAID THEY DIDN'T. BUT THEY ALSO ARGUE THAT THEY SATISFY THE NO-PARTY RULE.

>> BOTH SIDES SAY THAT ACTUALLY --

>> BUT WE HAVE EVIDENCE THAT MANY THE HOUSE BY USING THE COUNTY LINES, BY THAT THEY ARE PITTED AGAINST ONE ANOTHER. THAT THERE IS IF YOU LOOK AT THE COMPACTNESS VERSUS TEN YEARS AGO VERSUS TODAY THAT THEY'RE ESPECIALLY IN THE AREAS IN, YOU KNOW, SOUTHEAST FLORIDA THAT THEY'RE MORE COMPACT. THERE, SO THOSE I GUESS THAT BRINGS ME TO THE QUESTION I HAVE.

IF WE WERE TO FIND THAT THE SENATE MAP IS -- HAS PROBLEMS. INVALID BUT THE HOUSE MAP THAT CHANNELS HAVE NOT MET THEIR BURDEN.

>> RIGHT.

>> IS THAT SOMETHING THAT YOU UNDERSTAND BASED ON THE CONSTITUTION IS THAT THE JUDGMENT CAN BE SEVERABLE?

>> I THINK IT IS.

IN THE RESOLUTION WHICH I THINK IT WAS DESIGNED BY THE PROPONENTS HERE TO ALLOW JUST

THAT TO HAPPEN.
I THINK THAT WOULD BE THE
APPROPRIATE WAY FOR THE COURT TO
HANDLE IT IN THAT SITUATION.
NO REASON TO SEND BOTH OF THEM
BACK IF ONLY ONE HAS BEEN
DEMONSTRATED NOT TO MEET THE
CONSTITUTIONAL STANDARDS.
I WOULD URGE YOU ALSO IF YOU
DECIDE THAT THE HOUSE MAP HASN'T
BEEN SHOWN, WE HAVEN'T CARRIED
OUR BURDEN WITH THE HOUSE.
BUT NOT TO PRECLUDE SOME
ADDITIONAL TRIAL LEVEL, TYPE --
>> AGAIN I'M UNDERSTANDING.
I'VE GOT -- YOU AGREE WITH --
>> EVERYBODY WANTS TO MAKE
SURE.
>> YOU WANT TO HAVE IT.
SEEMS THAT THAT PUTS THIS
PROCESS INTO, FOR NOW FOR THE
CONSTITUTIONAL STANDARD.
IT WAS ONE THING IN 2002, WHEN
WE WERE TALKING ABOUT SECTION
TWO, SECTION FIVE, VOTING RIGHT
ACTS, AND AN EQUAL APPLICATION,
BUT NOW THESE STANDARDS ARE IN
THE CONSTITUTION.
WE NEED TO REVIEW THEM.
IF WE SAY BUT YOU CAN ALSO BRING
THEM LATER IF YOU HAVE SOME
FACTS THAT DEVELOP.
GIVES NO CERTAINTY FOR ANYBODY.
>> SEEMS TO ME GIVEN THE PUZZLE
THAT YOU'RE FACING HERE.
YOU OUGHT TO HAVE THREE CATEGORY
WAS THINGS.
THINGS THAT ARE VIOLATED.
NOT VIOLATED AND THINGS YOU
CAN'T DECIDE.
SOMEWHAT INTENTION WITH THAT
LAST CLAUSE OF SECTION 16.
SAYING WE CAN'T DECIDE THIS, AND
AS A MATTER OF THE FEDERAL
CONSTITUTION WE CAN'T PRECLUDE
PEOPLE.

EVEN A CLAIM THAT HASN'T BEEN
ADJUDICATED IN DUE PROCESS.

>> LET ME REFER TO THE SECTION
IN SECTION 16 WHERE IT SAYS, THE
PORTION TO BE BALLOT SHOULD BE
BINDING UPON ALL OF THE CITIZENS
OF THE STATE.

NOW THAT'S IN THERE.

>> AND IT IS.

>> AND THAT'S NOT PROCESS THAT
WE ARE IN NOW.

I DO NOT UNDERSTAND HOW CLAIMS
FOR OTHER THAN FEDERAL STATUTORY
OR CONSTITUTIONAL CLAIMS THAT
CAN BE OFF TO FEDERAL COURT ANY
TIME, HOW FOR STATE LAW CLAIMS
WE CAN SAY THEY CAN BE RAISED IN
SUBSEQUENT PROCEEDINGS MAYBE
HAVE A LITIGATION AROUND THE
STATE CHALLENGING VARIOUS
DISTRICTS THAT'LL --

I DON'T KNOW HOW THAT CAN BE
SCARED WITH THAT PART OF THE
CONSTITUTION SAYS.

>> I UNDERSTAND THE PROBLEM.
BUT WE HAVE ISSUES LIKE THE ONE
YOU RAISED BEFORE.

LIKE YOU SAID MAYBE WE CAN'T
DECIDE WHETHER OR NOT DISTRICT
SIX COULD SAFELY BE REDUCED TO
A --

>> THIS IS THE PROCESS PEOPLE
HAVE ESTABLISHED.

SAID THAT THIS PROCESS HAS
PROCOLLUSIVE EFFECT.
THAT'S WHAT IT SAYS.

>> CAN'T BE THE RIGHT ANSWER A
TO SAY THE PROPONENTS OF THESE
MAPS.

CAN'T DECIDE YOUR CLAIM BECAUSE
WE DON'T HAVE ENOUGH EVIDENCE.
ONCE WE DECIDE -- DON'T DECIDE
IT, IT'S DECIDED FOR THE NEXT
TEN YEARS.

YOU LOSE THAT; CAN'T BE THE
RIGHT ANSWER.

>> ON THE OTHER HAND IT SEEMS TROUBLING TO ME AFTER WE'VE SAID THESE THINGS VALID THAT'S WHAT WE SAY, THEN LATER ON, IF THERE IS A CHALLENGE, AND THAT CHALLENGE IS FOUND TO BE VALID. THEN HAPPENS? THEN YOU GET TO REAPPORTION OVER AGAIN?

>> THAT'S A COMMON THING. THEY HAVE TO REDRAW THE MAPS, IF THE LEGISLATURE DOESN'T DO IT, THE COURTS DO IT. THAT'S THE WAY IT'S DONE, YEAH.

>> SEEMS TO ME I CAN UNDERSTAND DOING IT AS A PART OF THIS, YOU KNOW, A MONTH OR SO FROM NOW, OR TWO MONTHS FROM NOW.

>> YEAH.

>> BECAUSE A YEAR FROM NOW AFTER IT'S GONE THROUGH, YOU KNOW, A TRIAL COURT PROCEEDING, ALWAYS A LITTLE DIFFICULT.

>> DIFFICULT CHALLENGES IN THE WAY THIS WAS STRUCTURED FOR SURE.

I SEE MY TIME HAS RUN OUT, YOUR HONOR, THANK YOU.

>> MR. CHIEF JUSTICE MAY I PLEASE THE COURT.

I'M JON MILLS.

COMPANY NEEDED TODAY IS JOSEPH HATCHETT.

AND ONE WITH FOX LEXNER.

THE COURT ASKED ABOUT STANDARDS AND PERHAPS JUSTICE KENNEDY AND I WERE THE ONLY ONE THAT READ THAT SECTION "SUBSECTION D." IN THE CONTEXT OF OUR STANDARDS WHICH WERE CORRECTED IN 1968 IN TERMS OF REVIEW, AND JUSTICE MENTIONED WE'VE BEEN DOING THIS SINCE 1968, AND THAT RECORD THAT WAS SENATOR JACK MATTHEWS, WHO WANTED THE FLORIDA SUPREME COURT TO BE THE REVIEWER BECAUSE HE

WANTED THE FEDERAL COURTS TO BE
THE DECISION MAKER.
SO FROM THE VERY --
OUTSET THIS VALIDITY REVIEW WAS
CRITICAL.
SO THERE'S A QUESTION.
WHAT IS THE EXTENT OF THE
VALIDITY REVIEW?
AND WHAT ARE THE IMPLICATIONS?
OF DETERMINING THAT IT'S VALID.
VALIDITY IS NOT DEFINED, THIS
COURT HAS CHANGED ITS MIND.
A COUPLE OF TIMES, ABOUT HOW
MUCH THEY SHOULD, YOU SHOULD
CONSIDER.
IN 2002, IT WAS QUITE NARROW.
YOU'RE NOT CONFRONTED WITH A
DIFFERENT DECISION.
THIS IS CONSTITUTIONAL
INTERPRETATION.
IN TERMS OF STANDARDS ONE OF THE
MOST INTERESTING THINGS ABOUT
DIFFERENCE TO THE LEGISLATURE IS
THAT AT ITS ESSENCE THIS IS AN
INTERPRETATION OF THE
CONSTITUTION.
THE COURT INTERPRETS THE
CONSTITUTION.
IF THE LEGISLATURE INTERPRETS
IT, THEY HAVE TO DEFER TO YOU.
THEY HAVE HAD TO INTERPRET THESE
PROVISIONS OF SECTION 21.
THAT'S THEIR DUTY.
BUT YOU ARE THE ULTIMATE
AUTHORITY.
SO THEIR INTERPRETATION MAY BE
INTERESTING.
BUT YOUR INTERPRETATION IS
BINDING.
SO IT SEEMS TO ME THAT ON IF THE
CONSTITUTIONAL INTERPRETATION
ISSUE, THE COURT IS SUPREME.
IF THERE'S ISSUE RELATED TO
DRAWING MAPS THEY MAY RECEIVER
DEFERENCE BECAUSE THERE'S A
LEGISLATIVE FUNCTION ON ON THE

CONSTITUTIONAL INTERPRETATION,
IT'S THE COURT.

NOW, ON THIS ISSUE OF VALIDITY,
THERE'S ACTUALLY THE 82 DECISION
PURSUANT TO THIS CONSIDERATION,
WHERE THE COURT SAID THIS
HOLDING IS WITHOUT PREJUDICE TO
THE THE RIGHT OF PROTESTER TO
QUESTION THE VALIDITY OF A PLAN
AS APPLIED TO APPROPRIATE
PROCEEDINGS.

WE HAVE STATE JURISDICTION TO
CONSIDER ALL FUTURE PROCEEDINGS
RELATED TO THE PORTION OF THE
PLAN.

THAT SEEMS TO SAY THAT THERE
COULD BE FUTURE PROCEEDINGS.

>> AND THAT OPINION, DID THAT
COHER THE SO MUCH AS KNOWLEDGE
THE PROVISION OF THE
CONSTITUTION WE TALKED ABOUT
EARLIER.

NO MENTION OF THAT, WAS THERE?

>> NO.

SO I CERTAINLY UNDERSTAND WHAT
YOU WERE SAYING THAT PROVISION
SAYS WHAT IT SAYS.

AND YOU HAVE TO FIGURE OUT WHAT
THE IMPLICATION IS.

I THINK IF YOU DETERMINE SOME
COMPONENT OF THIS AS VALID, YOU
ONLY DO INTERPRET THAT.

TO SAY WHETHER IT MEANS THAT'S
THE END OF ALL THE PROCEEDINGS.
AND AS MR. SMITH SAID, IF YOU'RE
GOING TO DO THAT, THEN YOUR
INTERPRETATION SHOULD ESCALATE.

OTHERWISE IF YOU'RE DECIDING
THIS FOR ALL TIME, THEN YOU'VE
GOT TO CONSIDER WHATEVER YOU
NEED TO CONSIDER TO SEE IF IT'S
VALID IN TERMS OF VALID MODIFIED
EITHER.

>> HERE'S A PROBLEM IN TERMS OF
THE PROCESS.

AND JUSTICE LEWIS TALKED ABOUT
IT IN 2002 BEFORE THE NEW
AMENDMENT.
IS THIS 30-DAY PERIOD.
LOOKED AT STATES THAT HAVE
ORIGINAL JURISDICTION.
FIRST OF ALL, I KNOW HINDSIGHT
IS WONDERFUL.
BUT THE LEGISLATURE IN THIS
STATE REAPPORTIONS ALMOST A YEAR
AFTER THEY RECEIVE THE CENSUS
DATA.
NO MATTER WHEN THEY GET IT TO
US, WE'VE GOT THIS 30 DAYS.
OTHER STATES LIKE WHAT WE DID IN
1972, 1982, 1992 IS BY RETAINING
JURISDICTION.
UP TO THIS COURT THEN TO DECIDE
IF ENOUGH HAD BEEN RAISED IN A
CHALLENGE TO LET IT GO TO A
COMMISSIONER.
NOT TO --
AND SO WE RETAIN THE ABILITY TO
DECIDE IF THERE WAS ENOUGH
THERE.
SO I DON'T WANT TO SAY THAT THE
JUDGMENT WAS INTERPRETED AS
DECIDING A FACIAL CHALLENGES.
BUT WE'RE LEAVING IT WITHIN OUR
BELLY WICK TO GO BACK BUT WE
HAVE THE 30 DAYS.
NO ONE SUGGESTED GO AHEAD AFTER
THE PETITION WAS FILED AND SEND
THIS TO A COMMISSIONER.
TO DECIDE ANY ISSUE THAT'S BEEN
RAISED THAT ARE -- COULD BE
FACTUAL ISSUES.
SO IN TERMS OF THE PROCESS,
SINCE NO ONE HAS -- DID SUGGEST
THAT, ARE YOU SUGGESTING THAT WE
SHOULD GO BACK TO 1972 AND SAY
THAT WE RETAIN JURISDICTION TO
ALLOW FACTUAL CHALLENGES TO BE
BROUGHT?
>> SAYING, YOU CAN DID THAT.
YOU ARE THE ULTIMATE

INTERPRETERS OF THE
CONSTITUTION.

>> WE KNOW OF WHAT WE CAN DO IN
TERMS.

>> IF THEY'RE VALID THERE ARE
TWO OPTIONS.

NOTHING, AND IT'S VALID, AND
UNDER STATE LAW THAT'S IT.

WHICH SEEMS A STRANGE
IMPLICATION IF THERE'S SERIOUS
DISPUTE AND EVERYONE IS SAYING
THAT THE ISSUES AND THE FACTS ARE
UNSETTLED.

SEEMS A STRANGE RESULT.

SO YOU CAN MAKE THAT
INTERPRETATION IF YOU WERE GOING
TO DECLARE IT VALID, YOU SHOULD.

NOW, ONE OF THE INTERESTING
THINGS ABOUT THIS PROCESS IS IF
YOU LOOK AT THE PROCESS AS IT IS
DESIGNED AND YOU MAY HAVE TO
LIVE WITH, ONE OF THE OPTIONS IS
TO SEND IT BACK.

NOW, WOULD IT ALL BE BAD TO SEND
IT BACK WHEN ALL OF THIS DISPUTE
EXISTS?

>> SEND IT BACK TO THE
LEGISLATURE.

IN OTHER WORDS --

>> REDECLARED INVALID.

>> YOU HAVE TO DECLARE IT
INVALID.

YOU HAVE TO DECLARE IT INVALID.

BUT ONE PART WOULD BE WE DON'T
KNOW ENOUGH TO DECLARE IT VALID.

>> THAT'S SAYING VERY
INTERESTING ARGUMENT.

BUT I DON'T THINK THAT WE CAN
CHANGE THE PROCESS BY WHICH
THERE IS A PRESUMPTION.

I SEE THIS AS THERE'S A
PRESUMPTION OF VALIDITY AND THE
CHALLENGERS BARE AT LEAST THE
INITIAL BURDEN OF SHOWING A
BASIS FOR INVALIDITY.

>> I CANNOT SEE HOW THERE'S ANY

PRESUMPTION OF VALIDITY IN THEIR
NECESSARY INTERPRETATION OF THE
CONSTITUTION.
VERSUS YOURS.

>> YOU'RE SAYING IF WE FIND
THAT A --

>> IF YOU DECIDE TO DEFINE THE
DISCUSSION WHICH I HOPE YOU
WILL, AND IN DETAIL.
AND YOUR DEFINITION IS IN
CONFLICT WHEN THEY'VE USED AS A
DEFINITION.

SEEMS TO ME THAT'S INVALID.

>> THAT WOULD BE A BASIS.

>> WHAT THAT DOES
PRAGMATICALLY, IS THE
LEGISLATURE THIS TIME OPERATED
IN THE DARK.
NECESSARILY DIDN'T HAVE YOUR
OPINION.

AT A FUTURE TIME, THEY COULD
HAVE YOUR OPINION AND FOLLOW IT.

>> WHAT ABOUT THE FACTUAL.

>> WOULD YOU AGREE THAT IF WE
DECLARE ONE OF THE PLANS INVALID
IT WOULD BE FALSE UPON US TO
ARTICULATE THE CLEAR REASONS FOR
THAT AND TO EXPLAIN VERY CLEARLY
HOW THE FUTURES OF THE PLAN THAT
CAUSE IT TO BE INVALID COULD BE
CORRECTED?

IT WOULD HAVE TO I THINK ONE OF
YOU SAID IN YOUR BRIEFS, ONE OF
THE OBJECTORS SAID IN YOUR BRIEF
THAT THAT WAS PART OF THE TASK
IF WE WERE TO DECLARE
INVALIDITY.

IS THAT YOUR UNDERSTANDING?

>> I'M NOT SURE IF YOU
SHOULD --

OR IF YOU'RE OBLIGATED TO TELL
THEM HOW TO REDRAW IT BUT YOU
SHOULD TELL THEM WHAT'S WRONG
WITH AND REASONABLY RETURN.

>> WE WON'T TELL THEM HOW TO
REDRAW IT BECAUSE WE HAVE A

PROCESS FOR A EVENTUALITY.
CAN'T BE THAT, CAN IT?

>> NO.

>> YOU REACH A CONCLUSION --
IF YOU REACH A CONCLUSION OF
INVALIDITY IT GOES BACK.

BUT AGAIN, THE BENEFIT OF THAT
IS THEY NOW OPERATE WITH A
CONSTITUTIONAL INTERPRETATION AS
BEFORE THEY WERE OBLIGATED TO
OPERATE FROM SIMPLY THE LANGUAGE
WHICH THEY THEMSELVES AND MANY
HAVE SAID AMBIGUOUS WE NEED TO
FLUSH IT OUT.

>> WHAT ABOUT, THE FACTUAL.
I CAN UNDERSTAND YOUR ARGUMENT
YOU'RE TALKING ABOUT AN
INTERPRETATION OF THE
DISCUSSION.

BUT IF THERE'S A FACT OF THE
PROBLEM SEEMS TO ME THAT SENDING
BACK TO THE LEGISLATURE ISN'T
GOING TO SOLVE THAT SETBACK
PROBLEM IS IT?

>> IF YOU SAY, FOR EXAMPLE, ONE
OF THE THINGS THAT WOULD BE ABLE
TO DEFINE WOULD BE INTENT TO
FAVOR.

THAT'S INTENT TO FAVOR OR
DISFAVOR ONE OF THE PARTS OF THE
MOST IMPORTANT PARTS OF THE
PROPOSAL WAS TO DEAL WITH
FAVORING OR DISFAVORING A PARTY
OR INCUMBENT.

SO A PARTY --

>> IT DOESN'T SAY A PARTY DOES
IT?

DOESN'T IT SAY --
PLAY?.

>> SO IF YOU DEFINE INTENT, IF
YOU DEFINE INTENT TO SAY THERE
ARE FACTORS THAT CAN INDICATE
WHERE THAT INTENT, WHAT INTENT
IS, AND THOSE COULD INCLUDE SOME
THINGS.

LET ME FIRST SAY THAT THE

IMPORTANCE OF DEFINING INTENT
CAN'T BE OVERSTATED BECAUSE THE
FUNDAMENTAL PREMISE UPON WHICH
THIS WAS PASSED WAS TO TRY TO
CREATE OR ESTABLISH OR FOSTER
PLANS THAT WOULD BE MORE
NONPARTISAN.

SO WHAT IS INTENT MEAN?
THE LAW DOES INTENT ALL OF THE
TIME.

WE DON'T ALLEGE THAT THERE'S
EVIL INTENT ON A PART OF
ANYBODY.

AND YOU DON'T HAVE TO ESTABLISH
IT.

WHAT YOU HAVE TO ESTABLISH, THE
BEST YOU CAN AND INTERPRETING
INTENT IS HOW DO YOU INFER
INTENT FROM ACTIONS?

BECAUSE UNLIKELY TO GET A MASS
CONFESSION.

THERE WAS SOMETHING WRONG.
SO IF INTENT MEANS ANYTHING, IT
HAS TO BE DEFINED.

>> HOW WOULD YOU --
LET'S GET TO THE MEAT OF THIS
SINCE YOU'RE ASKING THAT WE
ASSUME THAT YOU NEED TO DEFINE.
HOW WOULD YOU DEFINE INTENT.
DEFINE IT IN TERM WAS HOW IT'S
ESTABLISHED AND SHOULD BE
PREVENTED.

>> SEEMS TO ME THAT YOU GET
CERTAIN INDICIA BASED ON
ACTIONS.
THOSE COULD INCLUDE POLITICAL
IMBALANCE AND YOU'VE SEEN THAT
EITHER REGISTRATION PERFORMANCE.
YOU HAVE TO DECIDE WHETHER
THAT'S INFLUENTIAL OR NOT.

>> THE PORTION OF THE
IMBALANCE.

>> IN TERMS OF FACTS --

>> I ASSUME YOU'RE TALKING
ABOUT PERFORMANCE IN ELECTIONS.

>> YES.

>> HOW WOULD YOU GO ABOUT ESTABLISHING THE RANGE OF ELECTIONS TO ESTABLISH A BENCHMARK.

>> FIRST YOU HAVE TO CONSIDER IF THAT FACTORS ENOUGH. GROW SAY IT FACTORS ENOUGH YOU CAN ESTABLISH BENCHMARKS.

>> I'M ASKING WHAT YOU WOULD SUGGEST THAT WE USE TO USE THE BENCHMARK.

>> THE BENCHMARKS THAT'S BEEN USED IS STATEWIDE ELECTIONS WHICH INDICATE THE OVERALL PARTISAN BALANCE. NOW YOU REFERRED TO THE COMPRESSION FACTOR WHICH IS CALLED A DOBLER EFFECT IF YOU'VE READ THAT PROPOSAL IN THE HOUSE MENTION IT HAD THAT DEMOCRATS ARE MORE COMPRESSED.

>> DID YOU DISPUTE THAT?

>> NO.

WHAT I DO SUGGEST IS THIS: THAT ACTUALLY, THE PRIOR KNOWLEDGE OF THAT INDICATES THAT I KNOW IF I'M GOING TO DRAW A COMPACT MAP IT'LL BE SKEWED.

PARTISAN FAIRNESS IS A TIER ONE ISSUE.

WHY SHOULDN'T YOU MAKE THE SAME EFFORT YOU MAKE WITH THE OTHER TIER ONE ISSUE?

>> BECAUSE I GUESS ON THAT ONE, THE -- EVERY COURT THAT SPEAKS ABOUT HOW YOU DRAW A MAP THAT DOESN'T HAVE A FAVOR OR DISFAVOR OF PARTISANS SAYS THAT IF YOU ADHERE STRICTLY TO COMPACTNESS, POLITICAL RECOGNIZED, POLITICAL BOUNDARIES, AND EQUAL POPULATION, YOU DO NOT IN THIS STATE HAVE TO -- THERE IS NOT A REQUIREMENT LIKE THERE ARE. THERE IS IN ARIZONA THAT YOU HAVE TO MAKE IT POLITICALLY

NEUTRAL.

ALL THAT IS REQUIRED IS THAT IT NOT BE DRAWN TO INTENTIONALLY FAVOR IT.

SO I HAVE A REAL PROBLEM IF YOU'RE NOW SAYING THAT THEY DON'T -- SHOULDN'T FIRST START WITH OBSERVING THE TIER TWO REQUIREMENTS AS A WAY TO ASSURE THAT THE TIER ONE INTENT IS NOT, IS MET.

ESPECIALLY IF IT'S BECAUSE OF WHERE DEMOCRATS LIVE.

THEY CAN'T --

NOT GOING TO BUST DEMOCRATS UP TO THE PANHANDLE ARE THEY?

>> ACTUAL LANGUAGE IN TIER TWO, SAYS UNLESS IT CONFLICTS WITH TIER ONE.

TIER ONE IS RACE -- AND PARTISAN.

>> HOW CAN YOU HAVE AN INTENT TO FAVOR THAT IS -- BASED ON THE FACT THAT WHERE THE GEOGRAPHY IS, YOU SAID THAT WHERE THE COMPRESSION FACTOR, THE NATURAL THAT IF A COMMISSION AT ONE TIME, THAT IF A COMMISSION WAS DRAWING THIS, THAT THEY MIGHT COME UP WITH SOMETHING REASONABLY THE SAME MAYBE NOT FOR ONE AND THREE OR FOR 14 AND SIX AND NINE AND NOT FOR, YOU KNOW, THE ONES DOWN IN SOUTHEAST.

BUT OVERALL, THAT THEY WOULD COME UP AND DEMOCRATS WOULD NOT UNDER ANYBODY'S NEUTRAL VIEW, HAVE A MAJORITY OF THESE DISTRICTS.

>> YOU DON'T HAVE TO AND CAN'T COMPEL PERFECTION.

ALL I'M SUGGESTING BY THE STATEMENT I MADE IS THIS STUDY INDICATES THAT PEOPLE ARE KNOWLEDGEABLE ABOUT THE IMPACT.

THERE'S A SECOND REALLY
IMPORTANT --

>> WHAT'S YOUR SUGGESTING FROM
THAT IF I UNDERSTAND YOU
CORRECTLY IS THAT SUBSECTION A
IN THE LANGUAGE THAT THE PLAN
SHALL NOT BE --
SHALL BE DRAWN, I'M SORRY, THAT
SHALL NOT BE DRAWN TO DISFAVOR A
POLITICAL PARTY.

ONCE YOU HAVE THE KNOWLEDGE
ABOUT THE COMPRESSION EFFECT TO
GIVE EFFECT TO THAT LANGUAGE
WOULD REQUIRE THAT THE
LEGISLATURE ACTUALLY MAKE
COMPENSATIONS IN DRAWING LINES
THAT WOULD ACTUALLY HELP MAKE UP
FOR THE COMPRESSION FACTOR.
IS THAT WHAT YOU'RE SUGGESTING?

>> YOU HAVE TO CONSIDER THE
COMPACTNESS IN SUBSERVIENT IF
YOU HAVE SOMETHING THAT IS NOT
COMPACT, THAT IS DRAWN WITH THE
INTENT TO FAVOR OR DISFAVOR,
THEN YOU HAVE TO CHANGE IT.

AT --
THE SACRIFICE OF COMPACTNESS.

>> AGAIN, MAYBE I MISUNDERSTOOD
YOU.

>> I THINK I'VE SAID THE OTHER
WAY.

>> I THOUGHT YOU WERE
SUGGESTING IN ESSENCE BECAUSE OF
THE IMPACT OF THE COMPACTNESS
FACTOR.

THAT THE OTHER THINGS WOULD HAVE
TO COMPLY WITH SUBSECTION A, THE
LEGISLATIVE BODY DRAWING THE
LINES WOULD HAVE TO UNDERSTAND
THAT THAT'S GOING TO -- TO THE
EXTENT THAT THEY'RE COMPACTNESS
WILL FAVOR THE REPUBLICAN AND
HAVE TO DO OTHER THINGS TO
COMPENSATE FOR THAT.
BASICALLY A COUNTERVAILING
EFFORT TO BALANCE IT TO FAVOR

THE DEMOCRATS.

IS THAT WHAT YOU WERE SAYING?

>> WELL TO INVERT THAT AND SAY
THAT THE -- TO KNOW THAT DRAWING
THIS COMPACTLY WILL
INTENTIONALLY FAVOR.
SHOULD BE CONSIDERED.

>> WHAT ARE YOUR OTHER FACTORS.

>> THREE FACTORS, AND THE
SECOND FACTOR RELATES TO
POLITICAL PACKING.
WE'VE TALKED ABOUT RACIAL
PACKING.

POLITICAL PACKS IN A SHORTHAND
IF YOU HAVE THREE DISTRICTS OF
100 PERSONS EACH.

AND IF HALF OF THOSE AT 150 WERE
REPUBLICANS AND 150 WERE
DEMOCRATS, AND YOU PUT.

>> HELP ME WITH A NOTION OF
INDEPENDENCE.

YOUR CO-COUNSEL AS I UNDERSTAND
SAID THAT BASICALLY PARTY
REGISTRATION IS MEANINGLESS.
THAT, I'M NOT SURE THAT'S YOUR
POSITION AT ALL.

IF IT SEEMS TO MEET 3 MILLION
PEOPLE HOW THEY REGISTER TO VOTE
IS A FAIRLY MEANINGFUL PROCESS
TO THEM.

>> I THINK THAT THE FOCAL POINT
OF MOST OF THIS IS PERFORMANCE.
WHICH WOULD INCLUDE HOW
INDEPENDENCE GOES.

>> IT SEEMS TO ME IF SOMEBODY
CHOOSES NOT TO REGISTER IN A
POLITICAL PARTY THEY KEEP THEIR
OPTIONS OPEN.

PERHAPS THEY VOTE ONE WAY IN ONE
ELECTION AND ANOTHER IN A
DIFFERENT ELECTION.

>> INDEED THEY DO.

THAT WOULD SHOW IN PERFORMANCE.
SO YOU HAVE A DISTRICT SINCE WE
STILL HAVE DISTRICT --
WE STILL HAVE PARTIES.

[LAUGHTER]

AND SO THIS IS ASSESSING THE PERFORMANCE IN A DISTRICT OF THE PARTIES INCLUDING THE VOTES.

>> BUT IT SEEMS TO ME THAT IN MANY PERHAPS MOST OF THE DISTRICTS, THE ELECTIONS ARE GOING TO BE DECIDE BY WHOEVER IS AN INDEPENDENT MARGIN.

>> THAT MAY WELL BE.

>> SO THAT WOULD BE INCLUDED IN --

IF THAT'S TRUE, THEN HOW CAN, THE REPUBLICANS HERE BE FAVORED WHEN IT'S GOING TO BE DECIDED BY INDEPENDENTS?

>> IF THE TRADITIONAL DECISION, IF THE DECISIONS, WHEN THERE ARE TWO PIECES OF DATA.

THE ACTUAL DISTRICT LINE, AND THE PERFORMANCE IN THAT DISTRICT.

AND OF COURSE, ONE CAN CAN ARGUE ABOUT WHAT YOU PUT IN.

BUT THE ACTUAL PERFORMANCE INCLUDES WHAT INDEPENDENTS DID. IF THEY HELPED REPUBLICANS WIN BY 25%, THAT'S WHAT THAT DISTRICT WILL SHOW.

THAT ALL, EVEN IF SAY IN THE PANHANDLE, IF IT'S REPUBLICAN EVEN THOUGH IT'S A DEMOCRATIC REGISTRATION AND BE REPUBLICAN PERFORMANCE, SO TO EMPHASIZE THIS PACKING ISSUE, IN MY THREE DISTRICTS, IF YOU PUT 75 INDIVIDUALS FROM ONE PARTY IN ONE DISTRICT, THEN YOU GUARANTEE THE SUCCESS OF PARTIES IN THE OTHER TWO DISTRICTS AND THAT'S POLITICAL PACKING.

SO THE QUESTION IS IS THAT ACCIDENTAL?

HOW DOES IT OCCUR?

I REFERRED TO THOSE OF YOU WHO LIKE GRAPHS, IN THE COALITION

BRIEF, I-2 HAS A VERY GOOD REPRESENTATION OF WHAT THE DISPERSION OF DISTRICTS ARE. SO THE EFFECT OF POLITICAL PACKS IS TO FAVOR. SO YOU HAVE TO DETERMINE IF YOU THINK THAT SHOULD BE A FACTOR. THIRD FACTOR, IS POPULATION DEVIATION. SO THAT IS IF YOU HAVE A PARTY THAT YOU DON'T LIKE, YOU PUT ALL -- PUT THEIR DISTRICTS ARE OVERPOPULATED. DILUTING THEM. YOU HAVE TO THINK IF THE OVERALL PERFORMANCE STANDARD. THAT IS NOT OVERALL BUT THAT IS REVIEWABLE. YOU CAN LOOK AT ALL OF THE DISTRICTS, AND SAY, HOW WERE THEY DISTRICTED? NOW, I WANT TO TALK ABOUT THE RACIAL.

>> BEFORE YOU GET TO FINISH WITH THE INTENT, MY PROBLEM IS WHAT YOU SAID ABOUT USING COMPRESSION FACTOR, TO SHOW THAT THERE WAS AN INTENT, IS THAT, ARIZONA HAS IN ITS CONSTITUTION THAT TO THE INTENT PRACTICABLE COMPETITIVE SHOULD BE FAVORED. AND THIS IS A DIFFERENT STANDARD THAN WHAT WAS CHOSEN IN BOTH OF PROPOSAL AND ADOPTED. WHICH IS NOT EFFECTS. BUT UNLIKE AS YOU'RE GOING TO MOVE INTO THE MINORITY PROTECTION WHICH DOES DEAL WITH EFFECTS. BUT IT DOES USE INTENT. AND SO I AGREE THAT INTENT HAS TO BE SHOWN THE NOT GOING TO GET THE SMOKING-GUN COMMENT ALTHOUGH AS WE TALKED ABOUT IN THE NUMBERS.

SENATOR WHAT DID YOU DO TO ME?
THE FACT IS THAT WE'VE GOT TO
LOOK AT OBJECTIVE FACTORS.
OR IF YOU FINISHED WITH THE ONES
THAT BEFORE YOU GO ACTUALLY TO
INDIVIDUAL DISTRICTS OR
ANYTHING, THAT YOU WOULD SAY ARE
FACTORS THAT WOULD GO INTO
INTENT.

>> WELL, I SHOULD MENTION
ACTUAL RECORD EVIDENCE OR
COMMENTS.

I MEAN, THERE ARE COMMENTS ON
THE RECORD THAT COULD INDICATE
BIAS OR AT LEAST --

>> WHAT WOULD THOSE BE?

>> WELL, IT COULD EITHER BE
KNOWLEDGE OR BIAS.

FOR EXAMPLE, IF THERE ARE
STATEMENTS ON THE FLOOR --

>> WHAT ARE THE.

WE GOT THE WHOLE FLOOR DEBATES.

>> THERE ARE FLOOR DEBATES, AND
IN BOTH HOUSES ON THE LAST DAY.

ASSERTED THESE VERY FACTS.

THAT THEY WERE BIAS.

SO YOU COULD DISAGREE WITH THAT.

>> AGAIN, THEY COULD --

>> THE OPPONENTS OF THE PLAN
ASSERTED THAT.

>> RIGHT, AND YOU CAN AS A
PROPONENT DISAGREE WITH THAT BUT
CAN'T SAY YOU DIDN'T HEAR IT.

>> YOU CAN LOOK AT THE DRAWING
OF THE MAPS WHERE THE HOUSE HAD
STARTED OUT WITH FIVE MAPS AND
THEY --

IN THEIR COMMITTEE WOULD TALK
ABOUT WELL THIS ONE IS MORE
COMPACT.

THERE WAS A PROCESS THAT WHERE
SHOULD WE LOOK AT THE PROCESS.
BECAUSE THEY DIDN'T SHOW THE MAP
TO THE PUBLIC THAT THAT
INDICATED A LACK OF TRANSPARENT
CITY AND THEN OTHERS THAT SAY

NO.

WAS THERE ANYTHING ABOUT PROCESS
THAT WOULD GO INTO OUR ANALYSIS?

>> ONLY SAY IF --

IF IT FITS INTO THIS STANDARD OF
ACTUALLY SHOWING INTENT, THE
FACT THAT THERE'S A GOOD
PROCESS, OR THE FACT THAT
THERE'S A BAD PROCESS.

UNLESS IT CONTAINS SOMETHING
THAT INDICATES FAVORITISM SHOULD
BE NEUTRAL.

YOU'VE GOT THE PLAN.

IT'S UP TO YOU TO JUDGE THE
RESULT.

AND IN DOING SO YOU HAVE TO
INTERPRET THESE TERMS.

WAS THERE INTENT TO FAVOR OR
DISFAVOR.

>> WHAT DO YOU SAY ABOUT THE
FACT THAT IN THE SENATE PLAN
THERE IS NO PITTED AGAINST
ANOTHER INCUMBENT?

YOUR COLLEAGUE SAID SOMETHING
ABOUT THAT WAS --
VIRTUALLY IMPOSSIBLE UNLESS
THERE WAS THE INTENT.

HOW DO WE -- WHAT DO WE SAY
ABOUT THAT?

AGAIN IN THE HOUSE THEY HAVE
INCUMBENTS THAT ARE HIT AGAINST.

>> YOU COULD CONCLUDED THAT'S A
FACTOR.

I SAY THAT'S UP TO YOU.

YOU GOT TO CONCLUDE HOW YOU
DEFINE IT.

>> WE NEED HELP.

WE'RE --

>> I THINK YOU SHOULD DO IT.

[LAUGHTER]

GLAD TO PROVIDE ANY OTHER --
WELL THE --

>> THAT'S HELPFUL.

[LAUGHTER]

THANK YOU CHIEF JUSTICE, I
APPRECIATE YOUR SUPPORT.

ON THE RACIAL FAIRNESS ISSUE,
THIS IS OF COURSE CRITICAL TIER
ONE TOO.
BOTH OF THESE ARE TOP FACTORS IN
THE FAIR DISTRICT'S PROPOSAL.
SO I THINK YOU'VE DECIDED WHAT
IT MEANS.
THERE'S BEEN REFERENCE TO
SECTION FIVE, ET CETERA.
ONE THING I THINK THAT'S
IMPORTANT TO NOTE IS THAT
FLORIDA NOW HAS ITS OWN
STANDARD.
AND YOU'RE NOT COME PEOPLED TO
DEFINE THOSE PRECISELY THE WAY
ANYBODY ELSE HAS.
YOU CAN USE IT.
BUT ISN'T THE --
>> ISN'T THE LANGUAGE AND THE
TEXT HERE ACTUALLY DRAWN FROM
THE CENTRAL PROVISIONS AND
VOTING ACTS.
INCLUDING SUBSECTION 5 OF THE
VOTING ACTS?
>> THE WORDS ARE SIMILAR NOT
IDENTICAL, AND SO CERTAINLY YOU
CAN DO THAT.
WHAT I'M SUGGESTING TO YOU IS IF
YOU WISHED FOR THIS TO MEAN
MORE, AND SOME SENSE, IF YOU
LIKE TO SUGGEST THAT THESE
STANDARD SHOULD BE MORE
CONCERNED WITH ISSUES THAT WERE
CONCERNED TO FLORIDA LIKE RACIAL
PACKING WHICH HAS BEEN
MENTIONED.
IN OTHER WORDS A WAY TO DILUTE
VOTES IS TO PUT TOO MANY IN A
DISTRICT.
>> WHAT ABOUT DISTRICT 6 WHICH
IS WHAT ONE OF THE --
I BELIEVE THE ARGUMENT IS THAT
THAT'S WHAT WENT ON IN DISTRICT
6 BY GOING THROUGH AND PICKING
BLACK POPULATIONS OUT OF ALL OF
THESE COUNTIES.

THAT THEY OVERPOPULATED DISTRICT SIX.

>> THIS ACTUAL BRINGS ME TO PRECISELY ONE OF THE ISSUES WITH THESE PLANS THAT YOU COULD DETERMINE INVALIDITY WITHOUT GOING ANY DEEPER.

BOTH OF THESE PLANS ACCORDING TO THE PROPONENTS AND A THEIR LAWYERS, HAVE DEFINED THIS PROVISION AS SAYING WE DON'T RETROGRESS AT ALL ON PERCENTAGE. THEY SHOULD I'M SURE YOU'LL ASK THEM THIS QUESTION.

WAS THAT YOUR STANDARD? DON'T RETROGRESS AT ALL BASED ON PERCENTAGE.

YOU HEARD OTHERS AND THEM AND HEARD ALL BRIEFS SAY THAT YOU HAVE TO ACTUALLY EVALUATE THE EFFECT.

THE ABSOLUTELY PERCENTAGE IS NOT THE CORRECT TEST.

IN OTHER WORDS, DO WE THINK THAT 50% IN 2002 MEANS THE SAME THING AS 50% IN 2012 AND 50% IN 2022.

WE WILL PRESUME THAT PEOPLE AND VOTERS ACT DIFFERENTLY MAY BE LESS COHESIVE.

EASIER.

IF YOU'RE CONCERNED ABOUT NOT DILUTING THE ABILITY, YOU DON'T NEED TO GUARANTEE PERPETUALLY.

>> UNDER THE VOTING RIGHTS ACT WHERE THERE'S BEEN A SIGNIFICANT, A REDUCTION OF THE VOTING AGE POPULATION OF THE MINORITY GROUP WHERE IT WAS POSSIBLE TO NOT REDUCE IT WHERE THAT HAS BEEN UPHELD.

BEEN A REDUCTION IN THE VOTING AGE POPULATION.

I KNOW THERE ARE CASES AND I THINK WE'VE BEEN CITED A CASE WHERE IT SAID THAT THE MAINTAINING, MAINTAINING THE

VOTING AGE POPULATION IS NOT NECESSARILY ENOUGH. BUT YOU MAY HAVE TO DO MORE THAN THAT, BECAUSE OF THE FUNCTIONAL ANALYSIS BUT DO YOU HAVE A CASE WHERE YOU COULD SHOW US, AN ACTUAL SITUATION HAS BEEN UPHELD.

>> THAT'S THE CASE.

>> DO YOU THINK YOU'VE CITED A CASE THAT DOES THAT?

>> NO.

>> DO YOU THINK YOU HAVE A CASE THAT LOOKED FOR OR THAT?

>> SAY THAT AGAIN.

>> DO YOU THINK YOU HAVE A CASE THAT LOOKED FOR THAT?

>> PROBABLY DID.

>> WHAT'S THE STANDARD?

>> THE QUESTION IS YOU JUST SAID, MAYBE THE PERCENTAGE OUGHT TO BE HIGHER; RIGHT?

WELL MAYBE THE PERCENTAGE OUGHT TO BE HIGHER.

THEY DIDN'T EVALUATE IT.

IN TERM WAS THEIR TEST IT DOESN'T MATTER.

THEY DIDN'T DO IT.

>> THE HOUSE AND SENATE, NEITHER ONE DID THE EXTENSIVE VOTING ANALYSIS THAT'S DESCRIBED THAT THEY ACTUALLY DESCRIBE FROM TIME TO TIME THAT IS AS YOU'RE SUPPOSED TO DEAL WITH COHESION, RACIAL COHESION, WIDE VOTING COHESION, ET CETERA.

>> YOU'RE TALKING ABOUT THE FUNCTIONAL ANALYSIS NEEDS TO BE --

>> FUNCTIONAL ANALYSIS.

I THOUGHT THE HOUSE DID A FUNCTIONAL ANALYSIS, NO?

>> THEY CAN SAY THAT.

>> LET ME ON THAT, ON THE FUNCTIONAL ANALYSIS, BECAUSE THIS STILL, I UNDERSTAND EXACTLY

WHAT YOU'RE SAYING ON SECTION TWO.

AND I THINK THERE IS A DIFFERENCE IN TERMS OF WHEN THING IS BEING USED AFFIRMATIVELY AS A SWORD WHICH IS A SECTION TWO CHALLENGE VERSUS IT BEING A CONSTITUTIONAL GUIDELINES WHICH IS WE WANT TO MAXIMIZE THE ABILITY OF MINORITIES TO ELECT CANDIDATES, MINORITIES AND RACIAL AND LANGUAGE MINORITIES.

THE CONCERN I HAVE, AND IT WAS BROUGHT UP BY YOUR COLLEAGUE. I HAVE TO GO BACK TO THIS.

I THOUGHT THAT THE WAY MR. CARVIN TALKED ABOUT SECTION FIVE IN HIS BRIEF, WAS THE CORRECT WAY UNDER SECTION FIVE TO ANALYSIS RETT RETROGRESSION. IF IT WAS OVER 50% AND UNDER A COVERED JURISDICTION, THAT YOU COULD NOT GO --

>> YOU COULD NOT GO BELOW 50%. AM I INCORRECT ABOUT THAT? UNDER THAT THE --

>> MY UNDERSTANDING OF THE ANALYSIS.

>> LET ME FINISH.

THOSE WOULD BE PRECLEARED UNDER THE DEPARTMENT OF JUSTICE STANDARD FOR THE COVERAGE JURISDICTIONS OF SECTION 5?

>> THOSE WILL BE --

THE SECTION FIVE IN FLORIDA WOULD BE PRETTY CLEAR, YES.

>> IF IT WENT FROM A DISTRICT THAT HAD BEEN 53 PRESIDENT AND WENT TO 45%.

I'LL TALK --

>> ET CETERA, JUSTICE, I'M GLAD AND INTEREST TO THE HEAR THE RESPONSES OF THE PROPONENTS. IN OTHER WORDS, IF THEY CONSIDERED ALL OF THOSE FACTORS,

IN DEFINING THOSE DISTRICTS, AND DID THE ECOLOGICAL ANALYSIS AND THEN DETERMINED THAT THAT PERCENTAGE WAS CORRECT, THEN THAT'S REASONABLE.

I'M SAYING THAT --

WHAT THEY DID WAS INSUFFICIENT.

TO YOU SAY IN THE FLORIDA CONSTITUTION, YOU'RE GOING TO DEFINE THE FLORIDA CONSTITUTION TO SAY WHAT DOES THIS MEAN?

WHAT DOES IT MEAN?

SHALL NOT BE DRAWN WITH THE INTENT OR RESULT OF DENYING OR BRIDGE THAT YOUR OPPORTUNITY OR TO DIMINISH THEIR ABILITY TO ELECT.

I MEAN, YES THERE ARE OTHER STANDARDS BUT THAT'S UP TO YOU.

IT'S THE FLORIDA CONSTITUTION.

AND YOU CAN DEFINE WHAT DIMINISH ABILITY TO ELECT MEANS.

>> SO YOU'RE SAYING BECAUSE THEY DIDN'T GO THROUGH AT LEAST THE CORRECT FUNCTIONAL ANALYSIS, THAT THE DEPARTMENT OF JUSTICE IN THIS GUIDELINES SETS FORTH THAT THEY CAN'T SAY WELL WE DID IT BECAUSE WE DREW THESE DISTRICTS THAT JUST HAPPENED TO BE, YOU KNOW, HAVE ALL INCUMBENTS IN ORDER TO HELP MINORITIES WHEN THEY DIDN'T GO THROUGH THE CORRECT ANALYSIS. IS THAT YOUR ARGUMENT?

>> YES.

>> YOU HAVE TO FUNCTION A ANALYSIS, AND AS WE GO FORWARD, WHAT IS THE DEFINITION?

I MEAN, YOU'RE ENTITLED NOW TO DEFINE THAT.

AND IT SEEMS TO ME THAT IF WE'RE JUST TALKING ABOUT THE FUTURE, DO YOU THINK IT'S BEST FOR FLORIDA TO GUARANTEE THAT ANY DISTRICT NOW THAT'S 50 TO 52%

MINORITY WILL ALWAYS BE, WHAT IF IT CHANGES?

WHAT IF IT ONLY TAKES 35% TO ELECT A CANDIDATE OF THEIR CHOICE?

AND THE DATA A SHOWS THAT.

WHAT ABOUT THE RIGHTS OF THE OTHER PEOPLE, THE MINORITIES THAT ARE BEING, QUOTE, PACKED INTO THAT DISTRICT THAT COULD HAVE AN IMPACT IN AN ADJACENT DISTRICT.

YOU HAVE TO DEAL WITH THAT DEFINITION.

THERE WOULD BE ONE LAST POINT, THAT IS ONE OF THE MOST BASIC POINTS.

THAT IS EQUAL POPULATION.

>> THERE'S NEW LANGUAGE IN THE FLORIDA CONSTITUTION ON EQUAL POPULATION.

AND IT SAYS, SHALL BE AS NEARLY AS EQUAL AS PRACTICABLE. NOW THAT'S THE SAME IN THE CONGRESSIONAL ARTICLE AND IN THE LEGISLATIVE ARTICLE.

BECAUSE OF PREVIOUS INTERPRETATIONS ON THE CONGRESSIONAL DISTRICT BEEN INTERPRETED AS ZERO.

>> PREVIOUS U.S. SUPREME COURT --

>> AND ALL STATES COMPLY TO OPERATE WITH THAT.

THERE'S BEEN MORE FLEXIBILITY IN -- ON STATE PLANS.

BUT NOT UNLESS YOU'RE USING THAT FLEXIBILITY FOR REASONABLE PURPOSE.

IN OTHER WORDS, THE REASON THAT FLEXIBILITY WAS INSTALLED, WAS TO ALLOW STATES TO SEEK RACIAL FAIRNESS AND FAIR DISTRICTS RELATED TO RACE.

SO IF YOU'RE NOT DOING THAT, THERE ARE CASES, NOW THE LAROS

CASE THAT WENT TO THE U.S. SUPREME COURT, UNLESS YOU ARE NOT DRAWING -- USING THAT MARGIN, FOR REASONABLE PURPOSES INCLUDING TO ADVANCE THE CAUSES OF MINORITY DISTRICTS, YOU DON'T HAVE A SAFE HARBOR.

SO YOU'VE GOT TO GO BACK AND LOOK AND SEE IF THAT MEANS BASICALLY ZERO.

IF SO, THERE'S A PROBLEM.

I WOULD CONCLUDE, YOUR HONOR.

>> CAN I VOTE BEFORE YOU CONCLUDE, YOU DIDN'T MINCE HOW WE'RE GOING TO DEFINE COMPACTNESS AND POLITICAL AND GEOGRAPHIC BOUNDARIES.

DO YOU HAVE A PROPOSED DEFINITION OR DO YOU AGREE WITH THE, PROPONENTS THAT THE TERM COMPACTNESS IS SO VAGUE IT'S NOT CAPABLE OF BEING DEFINED.

>> IT'S CAPABLE OF BEING DEFINED AND YOU CAN.

>> HOW WOULD YOU DEFINE IT?

>> YOU CAN DEFINE IT AS RELATING TO RATIONAL STANDARDS. INCLUDING A TEST AND OTHER TESTS.

BUT ONE OF THE THINGS I'M SUGGESTING THAT IS IMPORTANT HERE IS THE LEGISLATURE OPERATED WITHOUT YOUR INTERPRETATION, NOW, WE'RE TALKING ABOUT INTERPRETING ALL OF THESE.

>> WHAT ABOUT UNPOLITICAL AND GEOGRAPHIC BOUNDARIES.

WE HAVE THE HOUSE THAT'S SAYING THE COUNTY LINES ARE THE MOST IMPORTANT LINES, AND IN THEIR DRAWING OF THE DISTRICT.

THE SENATE SAYS WE CAN REALLY IT SAYS POLITICAL AND GEOGRAPHIC BOUNDARIES.

THEY'RE EQUAL IN THE CONSTITUTION, SO WE CAN EQUALLY

FIND, YOU KNOW, IF WE FIND A GEOGRAPHICAL BOUNDARY, IT CAN TRUMP A POLITICAL BOUNDARY. WHAT'S -- WHAT IS YOUR VIEW OF THAT?

HOW WE WOULD INTERPRET IT?

>> THE LANGUAGE SAYS UTILIZE A GEOGRAPHIC BOUNDARIES, IN THE TEXT IT'S EQUAL.

>> IS THE AIR FORCE BASE A BOUNDARY?

THE CONSTITUTION?

>> I'M NOT SURE.

I MEAN, AIR FORCE BASE MAYBE A FEDERAL, MIGHT BE SOME WAYS YOU CAN DEFINE THAT.

BUT I WOULD LIKE TO CONCLUDE --

>> IT'S FEDERAL TERRITORY.

[LAUGHTER]

THAT'S RIGHT.

SO GOT TO BE A BOUNDARY, I GUESS.

BUT I THINK THAT ISN'T WHAT THIS SAYS.

IT SAYS, AND I PRESUME THOSE ARE POLITICAL AND GEOGRAPHIC BOUNDARIES UNLESS IT'S FEDERAL TERRITORY, MAY BE SO.

BUT YOUR OPTIONS ARE, SEEMS TO ME, ANY CASE YOU'RE GOING TO INTERPRET THESE PROVISIONS.

IF YOU INTERPRET THESE PROVISIONS WHAT HAPPENS?

IF YOU SIMPLY DECLARE IT VALID, AND THAT'S THE END OF ALL OF THE INQUIRY, THAT DOESN'T SEEM TO ME TO BE A FAIR OUTCOME.

IF YOU DECLARE IT VALID AND SAY THERE'S SOME THINGS WE DIDN'T KNOW BUT THESE ARE THE NEW STANDARDS, PROCEED SOMEWHERE. DO THAT.

AND WE WILL BE THE ULTIMATE REVIEWERS ANYWAY.

YOU CAN SAY IT'S INVALID.

IF YOU SAY IT'S UNVALID IT

ACTUALLY HAS A RELATIVELY
RATIONAL PUBLIC POLICY RESPONSE.
YOU GO BACK TO THE LEGISLATURE,
BUT NOW AS YOUR INTERPRETATION
AND THEY CAN WHETHER THEIR
EFFORTS WERE ASSUMING THEIR
EFFORTS WERE IN GOOD FAITH
BEFORE THEY CAN BE IN GOOD FAITH
NEXT.

AND BETTER INFORMED.

THANK YOU.

>> ALL RIGHT, THE COURT WILL
NOW STAND AND RECESS FOR ANOTHER
TEN MINUTES.

>> ALL RISE.

>>> ALL RISE.

>> PLEASE BE SEATED.

>> I WOULD LIKE TO --

CORRECT REPRESENTATION BUT
OPPONENTS JUST FACTUALLY WRONG.
THEY ARGUE THAT IT WAS
UNDISPUTED THAT WE HAD NOT
PAIRED ANY RETURNING SENATORS IN
OUR PLAN.

WE HAVE NO IDEA IF THAT'S TRUE.
THIS COURT ASKED THEM TO SUPPORT
THAT ACCUSATION, THEY
PROBABLY --

>> WE NEED TO HAVE THE TIME
RECESSED.

UNDER REBUTTAL NOW.

>> SO THE FIRST POINT IS
THERE'S ABSOLUTELY NO EVIDENCE
IN FRONT OF THIS COURT THAT WE
DID NOT PAIR?

I SENATORS.

THE COURT ASKED THEM
SPECIFICALLY TO REPORT THAT.
THEY PROVIDED FIVE NAMES OF
SENATORS.

OBVIOUSLY, THEY DIDN'T PROVIDE
THE OTHER SENATORS.

>> ON THAT QUESTION, I KNOW WE
TALKED AND NOT ABLE TO GET INTO
MUCH ON THE CHALLENGERS ABOUT

THE NUMBERING, DIDN'T IN TERMS OF DOING THE NUMBERS SO THAT YOU WERE ABLE TO BE IN YOUR WORDS EQUITABLE.

DIDN'T YOU TO HAVE TO KNOW THE ADDRESSES OF ALL OF THE INCUMBENTS?

>> NO WE NEED TO KNOW THE DISTRICTS.

NOT THE ADDRESSES.

OTHERWISE --

>> YOU WOULD HAVE TO KNOW THE DISTRICTS URN THE NEW PLAN WOULDN'T YOU?

>> YOU DON'T HAVE TO LIVE IN THE DISTRICT THAT YOU'RE RUNNING IN.

FOR EXAMPLE THEY WERE WRONG ABOUT THE SENATOR.

HE WAS RUNNING IN A DISTRICT THAT WOULD ENABLE HIM TO BE ON A PAR WITH EVERYBODY ELSE.

BUT THERE WAS NO INCUMBENT ADDRESSES.

THEY ARGUE THAT THIS COULD NOT HAPPEN NATURALLY NOT PUTTING TWO SENATORS TOGETHER.

I WOULD REALLY ENCOURAGE THE COURT TO LOOK AT G-3 OF THEIR APPENDIX TO THEIR BRIEF WHERE THEY WALK THROUGH THEIR PLAN AND THEY TELL YOU WHERE THE POPULATION WENT FROM THE OLD DISTRICTS TO THE NEW DISTRICTS.

AND IT'S VERY IMPORTANT TO NOTICE THAT THEY DON'T HAVE ONE PAIR OF RETURNING SENATORS IN THEIR PLAN.

THEY'VE GOT FOUR PAIRS, BUT ALWAYS ONE OF THE SENATOR'S TERM'S LIMIT.

SO IF YOU JUST FOLLOWED WHAT THEY VIEW AS A NEUTRAL VIEW OF PEOPLE WHO WERE TRYING TO DISRUPT THE STATUS QUO OF THAT YOU WOULD NOT WIND UP WITH ANY

PAIRS.

SO THESE ARE BIG DISTRICTS.
THE NOTION THAT YOU'RE GOING TO
PUT PEOPLE TOGETHER IS SIMPLY
NOT TRUE.

AS FAR AS WE CAN DISCERN AND
PIECING THIS TOGETHER THEY'VE
GOT THREE PAIRS IN THEIR PLANS.
EACH ONE OF WHICH IS HARMFUL TO
A VOTING RIGHTS THING.

WE HAVE ALREADY DISCUSSED I
BELIEVE THE ORLANDO PAIRING
WHICH DISABLES THEM FROM
CREATING A 50.5 HISPANIC VAP
DISTRICT.

I DON'T KNOW WHERE THEY'RE
GETTING THE NOTION THAT IT'S GOT
TO BE 50% VAP.

>> DID YOU ONE OF THE QUESTIONS
ASKED ON THAT WAS --
DID THE SENATE DO A FUNCTIONAL
ANALYSIS OF ALL OF THE DISTRICTS
IN ACCORDANCE WITH THE
DEPARTMENT OF JUSTICE
GUIDELINES.

>> PLEASE REED WHAT THEY SAY IN
THE QUOTATION FROM THEIR BRIEF.
YOU USE VAP AS AN IMPORTANT
STARTING POINT.

>> I'M JUST --
SO THAT INFORMATION WAS IN --
WAS IT IN THE SENATE SOFTWARE?
HOW CAN WE KNOW THEY DIDN'T USE
IT, AND WE WERE SUPPOSED TO ASK
YOU THAT HOW YOU USED IT.
HOW CAN WE LOOK AT THE RECORD.
LET ME FINISH MY QUESTION, MAKE
IT IS EASIER.

AND LOOK AT THE RECORD AND TELL
THAT YOU THAT THE SENATE, NOT
YOU, PERFORMED A FUNCTIONAL
ANALYSIS OF THE DISTRICTS.

>> I DIDN'T MEAN TO INTERRUPT
YOU.

I WAS TRYING TO CLARIFY.
WHEN I WAS TALKING ABOUT

FUNCTIONAL ANALYSIS WHEN UNDER
THE JUSTICE DEPARTMENT
GUIDELINES ARE YOU SUPPOSED TO
DO A FUNCTIONAL ANALYSIS.

WHEN YOU HAVE CONDUCTIONS INTO
VAP.

WHAT WE HAD IN DISTRICT SIX WHAT
WE'RE TALKING ABOUT.

WE HAVE A FINDING FROM A FEDERAL
COURT ANYTHING BELOW IN YOUR
MAJORITY WOULD DISABLE BLACKS.

WE HAVE A PROPOSAL FROM THE
NWACP WITH THE SAME BLACK VOTING
POPULATION THAT WE RECOMMENDED
AND ALTHOUGH THEY CAME IN AT THE
11TH HOUR.

TAKE IT DOWN TO 42% AND KEEP IT
IN JACKSONVILLE.

THEY DIDN'T PROVIDE VOTING
RIGHTS ANALYSIS THAT WOULD NOT
DIMINISH THE ABILITY TO ELECT
BUT MORE IMPORTANTLY, YOU ONLY
REDUCE VAP IF YOU ARE GOING TO
PUT THE EXCESS SOMEWHERE THAT
HELPS BLACKS EITHER INFLUENCE OR
BE ABLE TO ELECT THE CANDIDATES
OF CHOICE.

AND AT POINTS I WAS TRYING TO
MAKE BEFORE WAS WHAT DO THEY DO
WITH WHEN THEY SHAVE THE VAP
DOWN.

WHAT DO THEY DO WITH THE BLACK
COMMUNITIES THEY'VE CUT OUT OF
THE DISTRICT IN THAT DISTRICT
THAT WE HAVE TO CONTINUE THE
ABILITY TO ELECT.

SHOVE THEM INTO 0% WHITE
DISTRICTS NO ABILITY TO FORM --
>> ARE YOU ASSUMING THAT 90%
WHITE DISTRICT IS GOING TO BE
REPUBLICAN?

>> NO.

ACTUALLY I'M NOT.

I DIDN'T MEAN TO SUGGEST
OTHERWISE.

>> HAVE NO INFLUENCE BUT 90%

THERE IS SOME INFLUENCE.

>> OKAY THAT'S FIRST OF ALL,
WHAT WE'RE TALKING ABOUT
DISTRICT EIGHT THEY HAVE NO
CHOICE.

PURELY REPUBLICAN DISTRICT.
I THINK IT IS A TOSSUP DISTRICT.
POINT I'M MAKING WHEN WE'RE
TALKING ABOUT THE ABILITY TO
ELECT YOUR CANDIDATE OF CHOICE
WE'RE NOT TALKING ABOUT THE
ABILITY TO ELECT A WHITE
DEMOCRAT.

LET'S FACE IT.

WE NEED THE VOTING RIGHTS ACT IF
IDEA WAS TO ELECT WHITE
DEMOCRATS IN THE SOUTH OF THE
CASE WAS CLEAR YOU NEED TO BE
ABLE TO ELECT A PERIOD OF YOUR
RACE OR THEIR RACE.

NOT ALLEGING AND HIGHLY
IMPROBABLE THAT YOU COULD ELECT
A CANDIDATE OF CHOICE WHETHER HE
BE BLACK OR SHE BE BLACK OR
WHITE THAT'S WHAT THE SUPREME
COURT IS TALKING ABOUT WHEN
THEY'RE TALKING ABOUT THESE
COALITIONS.

>> THE REALITY IS, AND THE
BLACK COMMUNITY, SENSE
DEFINITION, WE ARE MINORITIES.
AND IF YOU JUST --
WERE DEPENDENT ON BLACK PEOPLE
ELECTING SOMEBODY, THAT WOULD BE
REPRESENTATIVE OF THEM, IT WOULD
NEVER HAPPEN.

SO THERE HAS TO BE SOME
COLLABORATION WITH BLACKS AND
WHITES AND MAYBE YOU MIGHT NOT
GET THE ONE IN YOUR TOSS BUT THE
LESS OF THE EVILS.

>> THERE'S A PERFECTLY
REASONABLE POLITICAL SCIENCE,
YOUR HONOR, BUT THE DECISION
THEY MADE IN 2006, IN THE 2006
AMENDMENT THAT THEY'VE BEEN

REFERRING TO IN SECTION FIVE IS.
IF YOU'RE IN A POSITION WHERE
YOU'RE ABLE TO ELECT A CANDIDATE
OF CHOICE WITHIN YOUR OWN GROUP,
YOU CAN'T DIMINISH THAT ABILITY
TO ELECT.

IN OTHER WORDS, YOU CAN'T BE IN
A SITUATION WHERE I'VE GONE FROM
INDEPENDENTLY SELECTING A
CANDIDATE OF CHOICE TO BEING
DEPENDENT ON ATTRACTING OTHER
PEOPLE.

NO ONE IS ARGUING THAT'S A BAD
THING.

WHEN WE GET TO THE SECTION TWO
PART AND CREATING NEW DISTRICTS
I THINK THAT'S WHAT WE'RE
TALKING ABOUT.

BUT AS WITH RESPECT TO EXISTING
DISTRICTS, AMENDMENT FIVE MADE
IT CLEAR.

YOU ARE GOING TO FREEZE THE
ABILITY TO ELECT AS OF THE TIME
OF WHAT WE INHERITED.

WE COULD HAVE NEVER REDUCED THIS
DISTRICT THAT WE'RE TALKING
ABOUT IN A WAY TO 42% AND HAD
ANY KIND OF SHOWING PARTICULARLY
IN THE FACE OF THE MARTINEZ
FINDING THAT WE HAVE NOT
DIMINISHED THE ABILITY TO ELECT.

AT BEST WENT FROM A SAFE
DISTRICT TO A COMPETITIVE
DISTRICT.

WHILE COMPETITION MAY BE GOOD
FOR POLITICAL SCIENCE LITERATURE
NOT GOOD IN DIMINISHING THE
ABILITY TO ELECT.

>> I WANT TO MAKE SURE.

I APPRECIATE THE ANSWER AND I
THINK I UNDERSTAND WHAT YOU'RE
SAYING.

BUT ON WHAT --

MR. MIL SAID ABOUT LOOKING TO
SEE WHETHER THE SENATE DID A
FUNCTIONAL ANALYSIS OF ALL OF

THE DISTRICTS USING THE CRITERIA OF THE DEPARTMENT OF JUSTICE CRITERIA WHERE COULD YOU POINT US IN THE RECORD.

NOT YOUR ARGUMENT ON IT BUT THAT IT WAS DONE AND DONE IN A WAY THAT WAS -- IS CONSISTENT WITH THE DEPARTMENT OF JUSTICE ANALYSIS?

>> YEAH, AND TO BE CONSISTENT WITH THE JUSTICE DEPARTMENT ANALYSIS, USE VAP NOT AS AN ALL ANGLE.

>> EXCUSE ME VERY SIMPLE QUESTION.

SHE'S ASKING YOU WHERE IN THE RECORD IS IT SHOWN THAT THAT WAS DONE.

>> UNFORTUNATELY JUSTICE LEWIS I THINK WE'RE TALKING ABOUT TWO DIFFERENT THINGS.

>> MAYBE YOU ARE THEN.

GETTING YOU ON THE SAME PAGE.

>> I UNDERSTOOD HER QUESTION.

>> MAYBE I SHOULD BEGIN FROM THE BACK END.

WE DID NOT SIT DOWN AND DO A ANALYSIS THAT LOOKED AT ELECTIONS.

WE DID HAVE, OBVIOUSLY, WE KNEW THAT IN THIS DISTRICT FOR THE PAST TEN YEARS THEY HAVE BEEN ELECTING A BLACK CANDIDATE OF CHOICE.

>> HOW DO WE --

UNDERSTANDING WHAT IS THERE, NOT WHAT YOU KNOW, BUZZ YOU MAY HAVE HAD CONVERSATIONS WITH YOUR CLIENTS, I'M ASKING SO THE ANSWER REALLY IS THAT THERE WAS NOT A FUNCTIONAL ANALYSIS WHICH DOESN'T JUST TAKE VOTING AGE. BUT IT ALSO LOOKS AT POLITICAL DATA VOTING PATTERNS IN ORDER TO ENSURE THAT WE'RE MAKING AN INTELLIGENT DECISION ABOUT WHAT

VALUE WE ARE PRESERVING WHEN WE SAY THAT THE SENATE WAS MOST CONCERNED WHEN THEY DRAFTED THIS PLAN ON PROTECTING BLACKS AND HISPANICS.

WHAT DO WE LOOK FOR TO MAKE SURE THAT THAT APPROPRIATE ANALYSIS WAS DONE IN THE RECORD IN?

>> THAT THE PRINCIPLE GROUP FOR BLACKS IN FLORIDA DREW US THIS DISTRICT.

PRESUMABLY COULD HAVEN'T HAD A PROREPUBLICAN MOTIVATION.

AND I JUST WANT TO CLARIFY THAT JUSTICE DEPARTMENT GUIDELINES DO NOT REQUIRE THIS RACIAL BLOCK VOTING ANALYSIS UNLESS YOU ARE REDUCING THE VAP SUCH THAT YOU HAVE TO PROVE TO THEM THAT NOTWITHSTANDING THE REDUCTION WE HAVE OBTAINED THE ABILITY TO ELECT.

THAT'S THE GUIDELINES, AND SINCE THERE WAS ABSOLUTELY NO REASON TO REDUCE THE VAP IN TERMS OF CREATING INFLUENCE ELSEWHERE. SINCE MARTINEZ HASN'T TOLD US THAT WAS EXTRAORDINARILY RISK AND AND THAT THE CIVIL RIGHTS GROUP IN FLORIDA US THAT THIS WAS THE WAY TO DRAW THE DISTRICT AS WELL AS BEING INCUMBENT UP THERE WHO WAS ON THE COMMITTEE SUPPORTED THIS PLAN.

WE FELT -- WHAT GOOD WOULD IT HAVE DONE TO RUN A COUPLE OF SHERIFF'S RACES FROM JACKSONVILLE TO COME UP WITH SOME NUMBER?

AND THAT'S THE ONLY TIME THE JUSTICE DEPARTMENT WANTS YOU TO DO IT.

SO I WANT TO ALLEVIATE THAT CONFUSION.

AND THAT IS THE KEY POINT.

THEY KEEP SAYING THAT THIS FALSE

VOTING RIGHTS OPINION IS IF I
CAN CONVINCED YOU ANYTHING I
WANT TO CONVINCED YOU THAT WE
DIDN'T MAKE THIS UP.

WOULD HAVE BEEN SUBJECT TO
EXTRAORDINARILY SERIOUS LEGAL
DISENFRANCHISEMENT IF WE DID
WHAT THEY WANTED US TO DO.

>> LET ME ON THAT.

BECAUSE MR. MILLS MAKES A POINT
THAT THE QUESTION IS THIS TO BE
INTERPRETED THAT FOREVER IN
NONCOVERED JURISDICTIONS, THAT
THE PERCENTAGES CAN NEVER CHANGE
EVEN IF IT'S A COUNTRY THAT ENDS
UP HAVING NOW ELECTED A BLACK
MAN AS PRESIDENT EVEN THOUGH
WE'VE GOT A SMALL PERCENTAGE OF
A MINORITY.

IS IT THAT THAT'S LOCKED IN NOW?
FOREVER AND EVER EVEN THOUGH
IT'S NOT REQUIRED YOU SHOULD THE
VOTING RIGHTS ACT?

>> NO.

WELL THERE ARE CONSTITUTIONAL
CHALLENGES PENDING IN THE VOTING
RIGHTS ACT ON PRECISE THINK THAT
THEORY.

THAT CONGRESS MADE A BIG
DECISION WHEN IT LOCKED IN THE
DISTRICTS.

THE SHORT ANSWER IS THEY'RE NOT
LOCKING IN THE VAPS.

WHAT THEY'RE LOCKING IN IS THE
ABILITY TO ELECT.

AS I'M SORRY, BUT I WAS TRYING
TO MAKE THE POINT AS RACIAL
BLOCK VOTING REDUCED WHICH WE
ALL HOPE WILL HAPPEN, THEN THE
REDUCTION CAN COME DOWN.

WE WERE SCRUPULOUSLY LOOKING AT
AN INDICATION TO RUN THIS
EXTRAORDINARY RISK THAT THEY
WANT US TO DO.

WE DID NOT ADOPT THEIR VIEW OF
THING WHICH WAS REDUCED THE

VOTING AGE POPULATION AS MUCH AS POSSIBLE AS LONG AS THERE'S SOME EVIDENCE THAT MINORITIES CAN CONTINUE TO ELECT THEIR CANDIDATE OF CHOICE BECAUSE OF BOUNDARIES.

BECAUSE WE THOUGHT TIER ONE WAS CLEARLY SUPERIOR TO TIER TWO.

THEY WANT US TO ROLL THE DICE. ON MINORITIES BEING REELECTED TO THE SENATE, OR CREATING HISTORIC NEW OPPORTUNITIES LIKE IN ORLANDO, BECAUSE OF TIER TWO, I DON'T THINK THAT'S A RATIONAL READING OF WHAT AMENDMENT FIVE IS ABOUT.

YOU SATISFY YOURSELF ON MINORITY VOTING RIGHTS, THEN YOU GO ON TO THE NEXT STEP.

THEY HAVE IT PRECISELY BACKWARDS THAT I CAN'T EMPHASIZE TOO MUCH OF WHAT ONE MIGHT VIEW AS A MECHANICAL CAN VIEW.

I WOULD ALSO LIKE TO BRIEFLY MENTION THIS NOTION, THAT IT IS TRUE THAT WE DID LOOK AT GEOGRAPHIC BOUNDARIES.

A LOT OF QUESTIONS ABOUT DISTRICTS ONE AND THREE.

I WANT TO EMPHASIZE THAT IT'S NOT AS IF WE IGNORED POLITICAL BOUNDARIES LOOK AT D-2 OF THEIR APPENDIX.

THE DIFFERENCE BETWEEN US AND THEM IS THEY KEPT 375 STATES WHOLE.

WE GET 362.

NOTWITHSTANDING ALL OF THESE VOTING RIGHTS THAT WE'VE TALKED ABOUT NOTWITHSTANDING THAT THEY WENT OUT OF THEIR WAY TO KEEP EVEN NONCOMPACT CITIES TOGETHER. SO THE DIFFERENCE IS HERE.

I DON'T ANYONE TO THINK THEY'RE MAJOR OR IMPORTANT.

WE HAVE SCRUPULOUS ABOUT DOING

THAT AS WELL.
IN TERM IT IS OF THIS ORLANDO
SITUATION I WANT TO CORRECT THE
NOTION THAT IT HAS TO BE 70%
VOTING AGE POPULATION.
NEEDS TO BE 50.5 VOTING AGE
POPULATION AND ENCOURAGE THE
JUSTICES TO READ THE BRIEF TO
SEE THAT THAT'S CORRECT.
MORE OBSCURE THAN YOU WOULD
THINK, THE WAY THEY COME AT DAY
COUNTY CREATES IMPLICATIONS AND
SOME OF THESE PAIRINGS IS A
FACIAL VIOLATION OF THE
CONSTITUTION.
THEY DID NOT DO ANYTHING WRONG
AND CREATED HISPANIC MAJORITIES.
THAT'S FINE.
BUT WHAT THEY DID TAKE WAS BLACK
COMMUNITIES AND SUBMERGE THEM
INTO THE DISTRICT 38.
THEY ALSO TOOK BLACK CITIZENS
AND TOOK THEM INTO DISTRICT 39.
THE LETTURE GOT A SECTION FIVE
OBJECTION FROM THE JUSTICE
DEPARTMENT LAST TIME, EVEN
THOUGH THE JUSTICE DEPARTMENT
SAID LOOK, THE DISTRICTS ARE
FINE.
BUT THE PEOPLE FROM THE
PROTECTIVE COUNTIES IF YOU JUST
LOOK AT THE COUNTIES THEMSELVES.
HAVE BEEN DIMINISHED IN THEIR
ABILITY TO ELECT.
IN OTHER WORDS, IT'S NOT
MINORITIES THROUGHOUT FLORIDA
HAVE BEEN HURT.
BUT YOU NEED TO FOCUS
SPECIFICALLY ON MINORITY
COUNTIES THAT'S A VERY IMPORTANT
SPECIFIC POINT UNLESS THERE ARE
FURTHER QUESTIONS, THANK YOU.
>> GOOD AFTERNOON I'M ALAN ON
BEHALF OF THE HOUSE.
I WANT TO RESPOND TO WHAT I VIEW
AS A CHANGING ARGUMENT DEALING

WITH THE PARTISAN PROPORTION.
AS I READ THE BRIEFS THE
ALLEGATION AS A I UNDERSTOOD IT
WAS THAT THE FLORIDA HOUSE
MANIPULATED WITH THE UNLAWFUL
PURPOSE OF FAVORING REPUBLICANS.
WE, OBVIOUSLY, STRONGLY DISPUTE
THAT.

BUT NOW I THINK THE ARGUMENT HAS
CHANGED TO SOMETHING A LITTLE
BIT DIFFERENT.

I'M PLEASED TO HEAR MR. MILLS
SAY THEY DO NOT ALLEGE ILLEGAL
INTENT AS I UNDERSTAND THE ART
NOW, IT IS THAT BECAUSE OF
RESIDENTIAL PATTERNS WOULD HAVE
THE NATURAL RESULT OF FAVORING
REPUBLICANS.

THAT AMENDMENT FIVE OBLIGATES
THEM TO REDRAW THE LINES TO
CHANGE THEM, MAKE MORE DEMOCRATS
ABLE TO BE ELECTED.

WE SUBMIT THIS AS NOT ONLY AS AN
INCORRECT INTERPRETATION OF
AMENDMENT FIVE.

TO DISSATISFIED WITH THAT
POLITICAL RESULT, THE FLORIDA
HOUSE WENT BACK AND REDREW THE
LINES WITH THE SPECIFIC INTENT
TO EQUALIZE OR CHANGE THE
ELECTORAL OUTCOMES TO PLAINLY BE
INTENT TO FAVOR THE POLITICAL
PARTY.

THAT WAS OTHERWISE DISFAVORED
AND DISFAVOR THE POLITICAL PARTY
THAT WAS OTHERWISE FAVORED.

THE ARGUMENT CAN'T WORK.

THERE'S A SECOND REASON.

THAT IS BECAUSE EVEN THOUGH THE
DISCUSSION TODAY HAS BEEN ABOUT
THE STATEWIDE MAP AND THE
AGGREGATE.

THIS MANY OUT OF 120.

IF THE ARGUMENT IS RIGHT THAT
THE HOUSE HAD AN OBLIGATION TO
MANIPULATE THE LINES TO ACHIEVE

SOME SORT OF PROPORTIONALITY
THAT WOULD BE TRUE NOT ONLY FOR
THE MAP AS A WHOLE BUT EACH
INDIVIDUAL DISTRICT.

THAT'S BECAUSE AMENDMENT FIVE
TALKS ABOUT NO PLAN OR DISTRICT
SHALL BE DRAWN WITH AN INTENT TO
FAVOR OR DISFAVOR.

SO YOU WOULD HAVE AN OBLIGATION
TO ESSENTIALLY DRAW 120 50/50
DISTRICTS WHICH IS IMPOSSIBLE TO
THE TIER TWO CRITERIA AS THE
COURT POINTED OUT DIFFERENCE
THROUGHOUT THE STATE.

PANHANDLE PEOPLE TEND TO VOTE
ONE WAY, AND BROWARD COUNTY
THERE'S A 2-1 DEMOCRAT
REGISTRATION ADVANTAGE OUT
THERE.

HOW WOULD THE HOUSE DRAW A
BROWARD COUNTY?

THE ANSWER IS THEY COULDN'T.

I A LITTLE WANT TO TALK ABOUT
THE EQUAL POPULATION ISSUE.

AND MR. MILLS AS SUGGESTED THAT
THE NEARLY AS A PRACTICABLE
LANGUAGE IS THE FEDERAL
CONSTITUTION, EXACTLY LIKE WITH
THIS, EXACT CASE THIS COURT
RELIED ON IN 2002 AND EARLIER.

>> THE WAY I SEE THE
DIFFERENCE, IF YOU AGREE WITH
THIS.

THAT THE DIFFERENCE IS THAT
BEFORE 2010, THERE WERE NO OTHER
CONSTITUTIONAL CRITERIA
OTHERWISE CONTINUE AS I READ
CASES OUT OF THE U.S. SUPREME
COURT, ONCE THERE ARE
CONSTITUTIONAL CRITERIA, THE
REASON THAT YOU CAN DEVIATE IS
IN ORDER TO SATISFY ANOTHER
CONSTITUTIONAL CRITERIA.

AND HOW CAN YOU -- THEREFORE
IT'S NOT DIFFERENT TERMS WHAT
MIGHT BE THE ACCEPTABLE

DEVIATION BUT DIFFERENT IN WHAT MIGHT BE THE ACCEPTABLE JUSTIFICATION.

HOW DO YOU RESPOND TO THAT APPROACH?

>> I THINK WITH RESPECT TO ALL OF THE TIER TWO CRITERIA THERE'S A BALANCE.

WHEN YOU DEVIATE THERE NEEDS TO BE A BALANCE IN ANOTHER ONE.

BUT TO THE INTENT THAT THERE IS A POPULATION DEVIATION, AND PLAINLY THERE MAY BE.

OTHERWISE IT WOULD BE A TIER ONE CRITERIA.

IF IT WERE ZERO LIKE WE HAVE IN THE CONGRESSIONAL, NOT ONLY A TIER ONE REQUIREMENT BUT CERTAINLY WOULDN'T BE -- SAY THERE'S NO PRIORITY AMONG THE TIER TWO CRITERIA.

>> I'M NOT SURE I GOT MY ANSWER.

MY QUESTION WAS, IS IT LOOKED AT ANY DIFFERENTLY BECAUSE IT'S NOW THE OTHER CONSTITUTIONAL CRITERIA, OR IN THE AMENDMENT RESTRICTING HOW THE LEGISLATURE CAN DRAW THEM BEFORE WHEN THERE WERE NO OTHER CONSTITUTIONAL CRITERIA.

>> I DON'T THINK SO, YOUR HONOR.

I THINK IT WOULD BE THE OPPOSITE.

OTHER REQUIREMENTS TO BE ADHERED TO.

>> THOSE ARE THE ONLY BASIS.

>> FAIR ENOUGH, YOUR HONOR AS APPLIED TO THE HOUSE MAP.

>> I HATE TO SAY THIS WAS A FRIENDLY QUESTION.

HE DIDN'T WANT TO ACCEPT THAT.

KIND OF A FRIENDLY QUESTION.

>> HE WOULD BE THE JUDGE OF IT.

[LAUGHTER]

>> I THINK THAT'S A FAIR POINT.
AND MR. MILLS SUGGESTED WHEN YOU
HAVE A DEVIATION HAS TO BE A
REASONABLE JUSTIFICATION.

>> DO YOU AGREE WITH THAT
STATEMENT?

I WONDER IF THERE'S ANYTHING TO
GET AGREEMENT ON.

DO YOU AGREE THERE HAS TON A
REASONABLE FOR THE POPULATION
DEVIATION?

>> THERE HAS TO BE A BALANCE.
WHAT YOU SEE IN THE HOUSE.

>> WHEN WE LOOKED A LANGUAGE
WITH RESPECT TO THE EQUAL
POPULATION, THAT LANGUAGE IS
BORROWED DIRECTLY FROM SOUNDS.
AND SO WE WOULD HAVE TO
UNDERSTAND THAT A REASONABLE
VOTER WOULD UNDERSTAND THAT
THAT'S PART OF THE LEGAL
FRAMEWORK IN WHICH THAT
PROVISION WILL OPERATE.
TO COME UP NOW WITH A MORE
RESTRICTIVE TEST, THAN THE TEST
THAT HAD BEEN APPLIED USING THE
SAME LANGUAGE WOULD SEEM TO BE
DOING VIOLENCE TO THE LANGUAGE
OF THAT TEXT.

>> I THINK THE ADDITIONAL
RESTRICTION COMES NOT FROM
INCLUDING THAT PROVISION IN
THERE BUT OTHER PROVISIONS AS
WELL, THE COMPACTNESS AND
POLITICAL BOUNDARIES.
AND AS APPLIED TO THE HOUSE MAP
WHAT YOU HAVE IS THE HIGHEST
DEVIATION IS IN CHARLOTTE
COUNTY.
WHAT WAS DONE TO KEEP CHARLOTTE
COUNTY WHOLE.
IF YOU HAVE CLOSER TO
MATHEMATICAL PRODECISION IT
WOULD BEEN DIVIDED.
THE LOWEST ARE THE DISTRICTS IN
LEE COUNTY WITH FOUR DISTRICTS

PUT TOGETHER MAKING UP THE COUNTY.

AGAIN, IF YOU INCREASE THOSE, THEN YOU WOULD HAVE TO SPILL OVER OUTSIDE OF LEE COUNTY.

WITH RESPECT TO THE MAP, THERE WAS A LOGICAL EXPLANATION FOR EVERY --

>> AGAIN, RATIONAL EXPLANATION WITHIN THE CONSTITUTIONAL CRITERIA FROM THE --

>> IT'S A BALANCING.

>> IF WE WERE I NOTICED SEVERAL TIMES IN THE HOUSE BRIEF, THAT THE HOUSE MENTIONS THAT SEVERABILITY.

IF WE DECIDED THAT THE SENATE MAP HAS PROBLEMS, IN TERMS OF THE CONSTITUTIONAL CRITERIA THAT THE HOUSE BECAUSE THE APPROACH WAS IN SOME WAYS DIFFERENT, DO NOT SUFFER FROM THE SAME PROBLEMS, DO WE HAVE THE OPTION OF ONLY VALIDATING PART OF THE JOINT RESOLUTION, THE SENATE PLAN AND NOT THE HOUSE PLAN?

>> I BELIEVE IN THAT CIRCUMSTANCE WOULD HAVE MORE THAN THE OBLIGATION. TO HAVE THE CALLS.

>> THE WAY IT WORKS THIS YEAR IS THAT THE HOUSE LEFT THE SENATE ALONE.

THE SENATE LEFT THE HOUSE ALONE. AND THEY BOTH AGREED THAT WHATEVER THEY PASSED WOULD GO OUT ON THE JOINT RESOLUTION.

>> THE ENTIRE LEGISLATURE ADOPTED THE JOINT RESOLUTION. IT IS THE PRODUCT.

>> IS IT NOT THE CASE THAT THERE WAS NO DEBATE IN EITHER HOUSE ON THE OTHER'S MAP?

>> THAT LEGISLATIVE RECORD REFLECTS THAT EACH MAP ORIGINATED IN ITS OWN CHAMBER.

>> WITHOUT ANY DEBATE, I MEAN,
THE HOUSE DIDN'T DEBATE THE
SENATE MAP, DID THEY?

>> I DON'T BELIEVE SO, YOUR
HONOR.

>> YOU KNOW SO THAT THEY
DIDN'T, AND THE SENATE DIDN'T
DEBATE THE HOUSE.

IF IT GOES BACK, BUT THE HOUSE
HAS ANY JOINT RESOLUTION NEEDS
THE ASSENT OF BOTH HOUSES;
CORRECT?

>> ABSOLUTELY, YOUR HONOR, YES.
THERE WOULD BE A NEW JOINT
RESOLUTION LIKE THIS JOINT
RESOLUTION FOLLOW THE
CONSTITUTIONAL REQUIREMENTS FOR
A JOINT RESOLUTION.
INCLUDING PASSAGE BY MOAT
HOUSES.

>> I WANT TO TALK A MINUTE
ABOUT THE RACIAL PROVISIONS AND
A THE STATEMENT THAT THE
OPPONENTS HAVE MADE THAT THE
HOUSE DID NOT DO A FUNCTIONAL
ANALYSIS.

WITH REGARD TO THE RATIONAL
DISTRICT OR MINORITY DISTRICTS
PLAIN INCORRECT.

THEY ABSOLUTELY DID.
RESULT OF THAT THEY ENSURED A
DEEP PROTECTION OF MINORITY
VOTING RIGHTS.

ENSURED BE A DIMINISHMENT --

>> HOW DID THE HOUSE GO ABOUT
THAT?

>> BY LOOKING AT A NUMBER OF
POLITICAL DATA.
REGISTRATION DATA AND AN THINGS
LIKE THAT WITH RESPECT TO THE
INDIVIDUAL DISTRICTS.

>> THAT'S IN THE HOUSE SOFTWARE
THAT --

THAT POLITICAL DATA IS IN THE
HOUSE SOFTWARE; CORRECT?

>> IT IS IN THE SOFTWARE YOUR

HONOR, BUT LOOKED AT COUNTY DATA THAT WAS OUTSIDE OF THE SAME SYSTEM.

IF YOU LOOK AT THE LEGISLATIVE RECORD YOU WILL SEE AMENDMENT MADE TO ADDRESS AREAS ABSENT THE AREA COULD HAVE BEEN A DIMINISHMENT.

YOU SEE WHAT YOU'RE TALKING ABOUT FUNCTIONAL ANALYSIS AND DEBATE ON THE LEAD PLAN THAT WAS IN FRONT OF THE HOUSE OF REPRESENTATIVES THAT WAS A FUTURE OF THE DEBATE, THE ANALYSIS THAT LONG BEFORE THEIR EXPERT CONCEDE NEED IT WOULD HAVE DIMINISHED HISPANIC VOTING RIGHT ABOUT WITH THE HOUSE IDENTIFIED THAT DURING THE DEBATE.

AND THAT WAS ONE OF THE REASONS THAT IT VOTED 21-0 TO NOT ADOPT THE PROPOSAL.

>> RELATED TO THE RACIAL DISTRICTS AND OTHER SUGGESTIONS WAS THAT THE HOUSE WAS LOCKED IN THE PERCENTAGE AND THE HOUSE DID NOT REDUCE ANY VOTING AGE PERCENTAGE IN THE MINORITY DISTRICTS.

THAT IS INCORRECT.

CLEAR FROM THE RECORD.

THAT THERE WERE SOME 60% AFRICAN-AMERICAN DISTRICTS. THIS WAS A NEW AFRICAN-AMERICAN DISTRICT THAT DIDN'T EXIST IN THE BENCHMARK PLAN.

>> BUT YOU DID NOT REDUCE IN PLACES THAT THERE WAS NOT ANOTHER OPPORTUNITY FOR A MINORITY DISTRICT.

>> I'M SORRY --

>> DID YOU REDUCE THE VOTING AGE POPULATION IN THE EXISTING MINORITY DISTRICTS IN THE ABSENCE OF AN OPPORTUNITY TO

MOVE THOSE EXCESS VOTERS OVER INTO A NEW MINORITY DISTRICT?

>> WELL, I'M NOT QUITE SURE HOW TO ANSWER THAT QUESTION.

THERE WAS AS A RESULT OF THE REDUCTION CENTRAL FLORIDA FOR EXAMPLE, NOW A 40%

AFRICAN-AMERICAN DISTRICT THAT WILL PROVIDE AN OPPORTUNITY TO ELECT IN ORLANDO THAT ADJOINS WHAT HAD PREVIOUSLY BEEN A HIGHER RATE.

NOW AS REDUCED INTO THE 50s.

OVERALL AN ADDITIONAL MAJORITY MINORITY DISTRICT.

WHAT THE HOUSE DID NOT DO IS DID NOT TAKE ANY EXISTING MINORITY PLUS DISTRICT AND REDUCE IT UNDER 50%.

SO THE HOUSE ENSURED THE PRESERVATION OF A DISTRICT.

>> WERE THERE ANY PERFORMING -- MINORITY DISTRICT WHERE YOU REDUCED THE PERCENTAGE A OF THE VOTING AGE?

>> IN A NON, THERE WERE SOME THAT REDUCED POPULATION. BUT THEY ALL WILL STILL PERFORM. THAT WAS THE HOUSE ANALYSIS.

BUT AGAIN, AND, IN FACT, BY REDUCING IT PROVIDED THE OPPORTUNITY FOR ADDITIONAL AFRICAN-AMERICAN DISTRICT AND HISPANICS DISTRICTS AS WELL.

>> SO, THIS ALLEGATION, THAT IN AND OF ITSELF DISPROVES THERE WAS RACIAL PACKING GOING ON. IN FACT IF THERE WAS ANYTHING, THE WHOLE PURPOSE OF HAVING A SECTION 20 PROHIBITION TO PROHIBIT PUTTING MINORITIES IN THE A DISTRICT TO THE OTHER MINORITY DISTRICT.

>> ONE OF THESE THINGS THAT YOU LOOK AT BECAUSE YOU MENTIONED IT WAS 21-0 THAT IT WAS PASSED OUT.

I DON'T, AND THE SENATE SAID THAT THEY FOLLOW THE NAACP PLAN. IN THE HOUSE IT LOOKED LIKE AND CORRECT ME IF I'M WRONG, THAT THE BLACK HAWK IS VOTED UNANIMOUSLY AGAINST THE HOUSE PLAN.

IS THAT CORRECT OR INCORRECT?

>> THAT IS CORRECT.

UNANIMOUS OPPOSITION.

TO THE HOUSE PLAN.

AND BUT IF YOU LOOK AT IT THAT IS NOT TO SAY, HOWEVER, THAT THE HOUSE MAP DOES WITH RESPECT TO AFRICAN-AMERICAN DISTRICTS IS DISADVANTAGEOUS.

IF YOU LOOK AT OUR APPENDIX TO OUR REPLY BRIEF, WE HAVE EXAMPLES THERE OF EVERY AFRICAN-AMERICAN MINORITY DISTRICT WITH WHAT THE HOUSE MAP DREW NEXT TO WHAT THE NWAACP DREWS, AND THEY HAD VERY SIMILAR LOOKING NOT IDENTICAL.

BUT IF YOU LOOKED A WAY THEY BELIEVE AFRICAN-AMERICANS SHOULD BE PROTECTED IT'S CONSISTENT.

>> YOU'RE SAYING WE SHOULD REFER TO THE BLACK ELECT OFFICIALS.

>> NO --

>> I'M SAYING YOU'RE SPEAKING AS IF THAT TRUMPS THE ELECTORAL OFFICIALS REPRESENTATIVE OF THE DISTRICTS IN TERMS OF THEIR OPINION OF THIS PLAN.

>> I'M NOT SAYING THAT ALL AT ALL.

FIRST OF ALL YOU CAN'T POLITICAL OPPOSITION IS THE PLAN.

THE FACT THIS WAS NOT ADOPTED IN BOTH CHAMBERS DOES NOT SPEAK TO A VALIDITY.

THERE ARE POLITICAL OPPONENTS TO IT.

AND IN THIS COURT.

THE ONLY ISSUE BEFORE THIS COURT
WHETHER IT'S CONSTITUTIONALLY
VALID.

IT IS.

>> YOU'RE THE ONE THAT SAID
THAT I KEEP HEARING THIS OVER
AND OVER AGAIN.

TALK GROUP REPRESENTATIVE GROUPS
OF THIS.

SO, I MEAN, THAT'S WHAT I WAS
SPEAKING TO.

>> WELL, WITH I THINK IT IS --

>> THIS IS A CONSTITUTIONAL
ISSUE.

THE WAY WE WILL DECIDE IT.

>> THAT'S RIGHT.

BUT IF THE CONSTITUTIONAL
ALLEGATION IS THAT WE'RE PACKING
AFTERNOON AMERICANS INTO
DISTRICTS AND ADOPTING
RECOMMENDATIONS MADE BY THE
NWAACP I THINK THAT'S GOOD.

BUT DISCUSSION ABOUT THE RACIAL
CLAIMS CAN'T BE RESOLVED,
WHETHER THERE'S A FACTUAL NEED
FOR RESOLVING FACTS.

>> I SEE MY TIME IS RUNNING
LOW.

I DID WANT TO RESPOND TO THIS
ARGUMENT BEEN MADE IN THE BRIEFS
AND HERE THAT SOMEHOW THE
LEGISLATURE JUST IGNORED
AMENDMENT FIVE.

WASN'T A PART OF THE PROCESS.
AND THAT IT WAS JUST BUSINESS AS
USUAL AND POLITICS AS USUAL.
NOTHING COULD BE FARTHER FROM
THE TRUTH.

AMENDMENT FIVE WAS FRONT AND
CENTER FROM THE VERY BEGINNING
UNTIL THE FINAL PASSAGE AND I
WOULD, I THINK THE PROOF IS IN
THE MAPS.

IF YOU LOOK AT WHAT THE HOUSE
MAP HAS DONE.

TRUE THAT THEY COMPLIED FACIALLY

AND EVERY RESPECT WITH THE
FEDERALLY AN STATE CONSTITUTIONS
AND WOULD ASK THE COURT TO PULL
THEM OUT.

>> ALL RIGHT.

WE THANK YOU ALL FOR YOUR VERY
ABLE ARGUMENTS, THE COURT NOW
STANDS ADJOURNED.

>> ALL RISE.