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SENATE REAPPORTIONMENT COMMITTEE HEARING
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Court Reporter

1 T A P E D P R O C E E D I N G S

2 SENATOR GAETZ: Good morning, everyone.
3 Welcome back to paradise. If the committee
4 members will please take their seats, and
5 members of the public and the press who are
6 here, we are delighted you've decided to join
7 us, and if you will settle in, we will get
8 started.

9 This is the Senate Committee on
10 Reapportionment, and I would ask the
11 administrative assistant to call the roll.

12 THE CLERK: Senator Gaetz?

13 SENATOR GAETZ: Here.

14 THE CLERK: Senator Margolis?

15 SENATOR MARGOLIS: Here.

16 THE CLERK: Senator Altman?

17 SENATOR ALTMAN: Here.

18 THE CLERK: Senator Benacquisto?

19 SENATOR BENACQUISTO: Here.

20 THE CLERK: Senator Braynon?

21 SENATOR BRAYNON: Here.

22 THE CLERK: Senator Bullard?

23 Senator Dean?

24 SENATOR DEAN: Here.

25 THE CLERK: Senator Detert?

1 SENATOR DETERT: Here.

2 THE CLERK: Senator Diaz de la Portilla?

3 SENATOR DIAZ DE LA PORTILLA: Here.

4 THE CLERK: Senator Evers?

5 SENATOR EVERS: Here.

6 THE CLERK: Senator Flores?

7 SENATOR FLORES: Here.

8 THE CLERK: Senator Garcia?

9 SENATOR GARCIA: Here.

10 THE CLERK: Senator Gardiner?

11 SENATOR GARDINER: Here.

12 THE CLERK: Senator Gibson?

13 SENATOR GIBSON: Here.

14 THE CLERK: Senator Hays?

15 SENATOR HAYS: Here.

16 THE CLERK: Senator Joyner?

17 SENATOR JOYNER: Here.

18 THE CLERK: Senator Latvala?

19 SENATOR LATVALA: Here.

20 THE CLERK: Senator Lynn?

21 SENATOR LYNN: Here.

22 THE CLERK: Senator Montford?

23 SENATOR MONTFORD: Here.

24 THE CLERK: Senator Negrón?

25 SENATOR NEGRON: Here.

1 THE CLERK: Senator Rich?

2 SENATOR RICH: Here.

3 THE CLERK: Senator Sachs?

4 SENATOR SACHS: Here.

5 THE CLERK: Senator Simmons?

6 SENATOR SIMMONS: Here.

7 THE CLERK: Senator Siplin?

8 SENATOR SIPLIN: Here.

9 THE CLERK: Senator Smith?

10 SENATOR SMITH: Here.

11 THE CLERK: Senator Sobel?

12 SENATOR SOBEL: Here.

13 THE CLERK: Senator Storms?

14 SENATOR STORMS: Here.

15 THE CLERK: Senator Thrasher?

16 SENATOR THRASHER: Here.

17 THE CLERK: Senator Wise?

18 SENATOR WISE: Here.

19 THE CLERK: Quorum present.

20 SENATOR GAETZ: Thank you very much. A
21 quorum being present, the Committee is called
22 to order, and I would like to start out with a
23 few housekeeping details, if we may.

24 First I want to thank our professional
25 staff, and especially John Guthrie. Since you

1 saw them last, they have been working virtually
2 and literally around the clock to flesh out a
3 proposal for your purview and your
4 consideration today, and I deeply appreciate,
5 Mr. Guthrie, your commitment and that of your
6 staff. Thank you very, very much.

7 Senator Storms made a very good point the
8 other day when we were last together, and that
9 is to what extent can the public still have an
10 opportunity to make their voice heard. And so
11 at my suggestion and at Senator Storms'
12 request, the committee staff sent e-mails to
13 the thousands of individuals who had given us
14 their e-mail address through the course of
15 public hearings, testimony here in Tallahassee
16 and them being in touch with us through e-mail,
17 advising them that we were in extraordinary
18 special session, inviting them to continue to
19 provide any suggestions or criticisms,
20 proposals they might have, pointing them toward
21 the Supreme Court's opinion, and also pointing
22 them toward other relevant information that
23 they might want to use to review where we are.

24 I would just mention to Senators that all
25 of the input that we have received, and we are

1 still gathering input as we speak, is found on
2 the redistricting website, and I know that
3 Senators have been consulting that site and
4 checking the information that has come in, and
5 we would encourage you to continue to do so.

6 Also I want to thank The Florida Channel.
7 Over the weekend, they aired a program on the
8 extraordinary special session, and then The
9 Florida Channel cut some spots that were shown
10 over the weekend to let people know about this
11 meeting and about their opportunities for
12 further input. So we thank The Florida Channel
13 for that.

14 Today, just as in all of our meetings of
15 this Committee all over the state and here in
16 Tallahassee, we intend to provide an
17 opportunity for public input, and I realize
18 that -- that there are some people who live and
19 work here in Tallahassee and may intend to
20 spend the day with us. There may be others who
21 have come from far, or might come at some point
22 during the day, having driven in from somewhere
23 else in the state, and if there are individuals
24 who wish to testify who have driven in from out
25 of town, if you'll simply contact one of the

1 committee staff, let us know that you are here,
2 we will make sure that you don't have to wait
3 until the very end of the day in order to share
4 your public testimony. We will -- with the
5 Committee's approval, we will probably take a
6 point during the day where if there is public
7 testimony, that we get the benefit of receiving
8 it if there are people who have driven from out
9 of town.

10 Today we have before us a proposed
11 committee substitute that is bar code 977956.
12 The maps, downloads and statistics for the
13 proposed committee substitute were published on
14 Saturday morning, I think at about 10:20,
15 March 16th. We did that 48 hours ahead of the
16 amendment deadline in order to give the public,
17 the press and members of this Committee and
18 other Senators and interested parties a chance
19 to review the proposed committee substitute so
20 that if they had their own amendments, they
21 could offer some. And, indeed, some have been
22 offered. There are five amendments that have
23 been filed to the proposed committee
24 substitute, and those amendments are on the
25 agenda today.

1 The two plans that were received before
2 the twelve o'clock deadline on Monday contained
3 some deficiencies, and we could have taken the
4 position that they were incomplete plans and
5 therefore did not meet the timely filing
6 deadline, but, instead, our professional staff
7 worked with its sponsors to correct the issues,
8 and so you have before you the amendments today
9 in what the sponsors have identified as proper
10 posture. I will recommend that the Committee
11 allow those amendments to be introduced and
12 heard, even though they came in pretty late in
13 the game.

14 We have one more amendment deadline that
15 was unanimously agreed to on the floor of the
16 Senate last week. Tomorrow at 12:00 noon,
17 tomorrow at 12:00 noon is the deadline for
18 filing floor amendments for Thursday's special
19 order.

20 Now, you know, I was one of those students
21 in college who if you told me that the paper
22 was due on Tuesday at 4:00, Tuesday at 3:00,
23 you know, the first piece of paper was slipping
24 into the old Remington Rand typewriter, and so
25 I am -- I am guilty of living close to

1 deadlines myself, but let me -- let me just
2 share with you that the two substantive -- two
3 of the three substantive amendments that were
4 filed on this bill today, on this PCS today,
5 came in ten minutes -- one came in ten minutes
6 before the noon deadline, one came in two
7 minutes before the noon deadline.
8 Technically -- and both amendments were faulty.
9 But as I said, we -- we encouraged professional
10 staff and they were very willing to work with
11 the sponsors so you have good amendments before
12 you today. But I would just ask you to be
13 mindful that if you want your amendments to be
14 timely filed and considered for the floor,
15 please, let's remember that if you bring in an
16 amendment, it may have to be burnished or
17 worked on or de-burred to be technically
18 correct, and then it has to be loaded up on the
19 website so everyone can see it.

20 So there are three steps members should
21 follow when filing an amendment for the floor
22 for Thursday's special order. First, after
23 completing a complete statewide map in District
24 Builder, then Senators would use the "Submit
25 Plan" feature to publish the plan to the Web.

1 And we would encourage you to alert
2 redistricting staff that a plan is in the
3 hopper so they can give it priority attention.
4 We want our professional staff to work with
5 you, but please bear in mind that if you can
6 give them a little bit of advance notice, you
7 are going have a better chance of meeting the
8 amendment deadline. Once staff starts formal
9 processing, it can take an hour or more to
10 generate all of the maps, statistics and
11 downloads and post them to the Web. So what I
12 am saying is if you want to meet a noon
13 deadline, please, please, please try to get the
14 amendment in by 10:00 or 11:00 in the morning.

15 Ones the plan appears on the Web, Senators
16 will request that the Senate bill drafting
17 office prepare an amendment using the full
18 legal description which is published on the
19 Web. And then finally, Senators would file the
20 bar coded amendment with the Secretary's office
21 when the bill reaches the floor. And, again,
22 as I say, it takes time to complete these
23 tasks, so if a Senator it is going to offer an
24 amendment for the floor, the complete statewide
25 plan should be delivered to our staff by 10:00

1 a.m. tomorrow. If it is not, then we can't
2 give you a guarantee that the amendment will be
3 timely for the floor. And early on this
4 Committee said, and we represent a majority of
5 the Senate, we said early on that we would
6 resist last-minute amendments, we would resist
7 ambushes, surprises, gotchas, and in order to
8 maintain that integrity for all of us and for
9 the full Senate, we would ask you, please, if
10 you have floor amendments, get them in by 10:00
11 tomorrow so that we can help you make sure they
12 are technically correct so they are not
13 discarded on the floor just for technical
14 reasons.

15 Today, Senators, we will begin with a
16 presentation of the PCS, then we will take up
17 the two amendments by Senator Diaz de la
18 Portilla, and then we will take up the two
19 amendments sponsored by Senator Latvala. And
20 before voting on the underlying PCS, we will
21 take up Senator Altman's amendment. After
22 considering all the amendments, we will debate
23 the proposed committee substitute, which is
24 plan S000S9016. S000S9016. And once we have
25 concluded debate, then the Committee will vote

1 on the plan.

2 We have been given by the President and
3 the Rules Chairman an ample amount of time
4 today, going from 9:00 until 6:00. We may use
5 every minute of that, or we may use less than
6 that, but we're on a constitutional schedule
7 now that we really can't extend, and so,
8 therefore, my hope would be that at some point
9 today we would consider a motion to vote at a
10 time certain to give all of our amendment
11 proposers an ample opportunity to be heard and
12 then to have an opportunity to vote up or down
13 on the PCS.

14 So if there are no questions about
15 business for the day -- and let me stop there.
16 Are there any procedural questions, any
17 questions about how we are going forward?

18 Leader Rich, are you satisfied that we are
19 all right? Leader Smith, are we okay? Leader
20 Gardiner? Okay.

21 Then please move to tab one, and Senator
22 Negron moves that the Committee take up the
23 proposed committee substitute for Senate Joint
24 Resolution 2-B. Show that motion adopted
25 without objection. We are now on the proposed

1 committee substitute. And, Mr. Guthrie, our
2 professional staff director, you are recognized
3 to explain the PCS.

4 Oh, one other quick thing, and that is
5 I -- there are one or two things that I can do
6 pretty well. One of them is stop at the bagel
7 shop. So there are bagels in the back and
8 there is cream cheese in the back. We will
9 later take up the question of what we want to
10 do at lunch, but, please, feel free to go back
11 and help yourself. No lox. Sobel -- Sobel has
12 to criticize, always criticize, but there's
13 bagels and cream cheese, and I think one of the
14 cream cheese has lox in it, Senator Sobel,
15 geez.

16 Mr. Guthrie, you are recognized.

17 MR. GUTHRIE: Thank you, Mr. Chairman.

18 What I would like to do in the next
19 several minutes here this morning is walk the
20 Committee through, Mr. Chairman, the life that
21 you and I have lived over the past week as we
22 have taken the direction that we got from the
23 Constitution, and let's turn back to the
24 Constitution, that is always where we start
25 these deliberations, the input and insights we

1 got from our 24 public hearings and our many
2 public meetings here in Tallahassee, and also
3 now we have the order or opinion of the Florida
4 Supreme Court, a very detailed order telling
5 the Senate what must be done in order to create
6 a redistricting plan for the State Senate that
7 conforms with the judgment of the Court.

8 At our last meeting, we traced through
9 what the Court found and then how it applied in
10 certain areas of the state. Let's start with
11 that again today.

12 First off, the Court acknowledges that it
13 is the Legislature's constitutional duty to
14 adopt a Joint Resolution of Apportionment
15 conforming to the judgment of the Supreme
16 Court. The Court held that eight Senate
17 districts are constitutionally invalid, and the
18 Court said that the Legislature should remedy
19 the constitutional problems with respect to
20 these districts, redrawing these districts and
21 any affected districts in accordance with the
22 standards as defined by this Court. So the
23 Court identified eight districts that needed
24 addressment in order to conform. The plan that
25 is before you in the proposed committee

1 substitute actually impacts 24 districts.
2 Three-fifths of the state is affected by the
3 ripple effect of modifying the eight districts
4 identified by the Court in order to conform
5 with the Court's guidance and judgment.

6 Let's take a second here to look at the
7 areas that were not affected by the -- by the
8 proposed committee substitute. We have a
9 district in the Panhandle -- actually, it
10 includes the City of Tallahassee -- that is
11 made up of 11 whole counties. The Court found
12 that there was nothing wrong with that
13 district, and so this plan does not modify that
14 district.

15 Similarly, in the remainder of the Big
16 Bend area, we have District 2 with nine whole
17 counties and one partial county. The Court did
18 not level any concerns or objections to
19 District 2, or to the adjacent District 7,
20 which is made up of three whole counties.

21 Going down the -- through the Tampa Bay
22 area, Pasco County, Hernando County, Pinellas
23 and Hillsborough County, with the exception of
24 the district that extended into Lakeland, none
25 of those districts were modified by the Court's

1 judgment.

2 The district in Sarasota, a compact
3 district in all of Sarasota and a part of
4 Charlotte County, the Court had no concerns
5 with that district in the initial opinion, and
6 this plan does not change it.

7 In Miami-Dade County, including the
8 Section 5 counties of Monroe, Collier and
9 Hendry, the Court did not have any -- or
10 express any concerns with invalidity of the
11 districts in all of Miami-Dade County or in the
12 nearby Section 5 counties.

13 Every other part of the state, however,
14 and so the western Panhandle, the eastern
15 seaboard from Jacksonville through Orlando down
16 to the Broward/Miami-Dade line, and the one
17 district in southwest Florida, so Lee and
18 Collier Counties are the -- those are the areas
19 that were impacted by the remedy that is before
20 the Committee here today.

21 SENATOR LATVALA: May I ask a question,
22 Mr. Chairman?

23 SENATOR GAETZ: Senator Latvala for a
24 question.

25 SENATOR LATVALA: While you are going

1 through the districts that were not impacted by
2 the decision and thus we didn't change, it
3 brings to mind a question. There were a number
4 of the districts which were invalidated by the
5 Court because of extra tentacles, so to speak,
6 that in their judgment weren't required for the
7 district to be functionally performing, I think
8 the district in Jacksonville, maybe the
9 district in Broward and Palm Beach County and
10 so forth. District 40 in Miami has probably
11 more of those tentacles than anywhere else.
12 What would be the rationale that that district
13 shouldn't be treated the same as the other
14 districts that were invalidated for that same
15 kind of situation?

16 SENATOR GAETZ: Mr. Guthrie?

17 MR. GUTHRIE: The Court was very explicit
18 on what districts the Court believed that the
19 Legislature needed to address in order to
20 conform with the judgment of the Court. As to
21 the particular district that you asked about,
22 District 40, I believe that that district is
23 considerably more compact than the Section
24 5-covered district that it is replacing. The
25 district that it is replacing also is in

1 Broward and Palm Beach Counties, and it has a
2 tentacle, if you will, or an appendage
3 extending up U.S. 1 to downtown Miami through
4 some significantly populated areas. With the
5 new district, the connection between the
6 downtown communities and the Section 5 areas of
7 Monroe, Hendry and Collier Counties is made
8 through the areas east and west of the airport,
9 which are not very heavily populated. It is a
10 very straight line, it is a wider corridor than
11 what was there before, and I -- I was pleased
12 to recommend to this Committee that alignment
13 for that district initially, and the Court
14 found nothing wrong with it in its opinion. I
15 don't see an imperative for the Committee to
16 address it today.

17 SENATOR GAETZ: Senator Latvala?

18 SENATOR LATVALA: Do we have assurances --
19 you know, I've heard different things with
20 regard to -- I forget the -- is it called res
21 judicata or something like that that is the
22 legal term that says if you didn't bring an
23 argument, you can't bring it up later? I mean,
24 is there anything to prevent a group now that
25 they have seen the Supreme Court's decision on

1 other districts from challenging one of the
2 districts that was not mentioned in the
3 decision on the same grounds that they used to
4 throw out another one? I mean, do we know --
5 do we know that we are past that point in this
6 process where that issue could be raised about
7 District 40?

8 SENATOR GAETZ: Well, since you are
9 speaking Latin, we will defer to competent
10 counsel. Mr. Bardos.

11 MR. BARDOS: So the doctrine of res
12 judicata ordinarily precludes claims from being
13 litigated a second time after they have been
14 decided once. The Court at oral argument, or
15 some justices at least suggested that the Court
16 is conducting a review that is not necessarily
17 limited to those that the objectors are -- the
18 claims that the objectors are bringing, but the
19 Court's opinion doesn't speak to that issue, so
20 -- and this is a very different proceeding from
21 those that ordinarily go through the court
22 system, so we don't have that sort of
23 assurance.

24 Now, there were specific districts that --
25 which the Court did uphold against specific

1 challenges, and there would be a certain
2 assurance that -- that the Court wouldn't
3 decide it a different way if the district
4 hasn't changed. But where no challenge was
5 brought, it is not clear really one way or
6 another from the Court's opinion whether it
7 would consider that as res judicata.

8 SENATOR LATVALA: Thank you.

9 SENATOR GAETZ: Thank you. Mr. Guthrie,
10 please continue.

11 SENATOR BRAYNON: Mr. Chairman, I am down
12 here in the back, the other way.

13 SENATOR GAETZ: Senator Braynon.

14 SENATOR BRAYNON: Yes.

15 SENATOR GAETZ: There you are. Just got
16 off the airplane, looking good.

17 SENATOR BRAYNON: Thank you. On the same
18 topic, the Court mentioned functional analysis
19 of all the minority districts, and some of them
20 are not numbered in 1 through -- in the, you
21 know, 1, 3, 6, 9, 10, 29, 30, 34, and I would
22 assume they asked, and I think they mentioned
23 it, they wanted us to do a functional analysis
24 to see if those districts would be valid as a
25 result of, and if we did so, and if one was not

1 valid, then wouldn't it make the list of ones
2 that we would have to change, and did we do a
3 functional analysis of all of those minority
4 districts that the Court specifically said we
5 needed to do of all minority-majority
6 districts?

7 SENATOR GAETZ: A good question, Senator
8 Braynon, and I think -- if you wouldn't mind
9 holding that question, I think there will be a
10 presentation that will refer to functional
11 analysis today, and if you don't believe that
12 the presentation is responsive to your
13 question, I promise you we will come back to
14 it. Is that okay?

15 Go ahead, Mr. Guthrie.

16 MR. GUTHRIE: And I wasn't going to
17 formally go through the functional analyses,
18 but what I can assure Senator Braynon is what I
19 assured the Committee when we met last week.
20 Indeed, the Senate realized that the Supreme
21 Court was directing that we conduct a
22 functional analysis of the sort that the
23 Supreme Court conducted and laid out in its
24 opinion. So that is exactly what we did, we
25 did it for all of the districts, all of the

1 minority districts in the state, and we did it
2 for multiple plans. So -- so we have done it
3 for all of the amendments that are before you
4 today, we did it for the plan that passed the
5 Legislature, we did it for this remedy plan.
6 So, yes, the functional analyses have been
7 done.

8 SENATOR GAETZ: And during the discussion
9 of the specific plans, Senator Braynon, it
10 would be entirely in order for you to ask about
11 functional analysis as applied to any of those
12 districts. Anything else at this point?

13 Okay. John, go ahead, please.

14 MR. GUTHRIE: The Supreme Court also
15 addressed the City of Lakeland, we will recall.
16 They said that the Legislature should determine
17 whether it is feasible to utilize the municipal
18 boundaries of Lakeland after applying the
19 standards as defined by this Court. And
20 finally, the Supreme Court directed that the
21 Legislature should renumber the districts in an
22 incumbent-neutral manner.

23 So that is the -- the guidelines or the
24 conclusions from the Supreme Court order that
25 this Committee received, that this Legislature

1 received, for coming up with a plan that will
2 conform to the judgment of the Court.

3 SENATOR STORMS: Excuse me, a question, a
4 question.

5 SENATOR GAETZ: Senator Storms?

6 SENATOR STORMS: Thank you, Mr. Chair. I
7 have a question, a legal question, please.

8 SENATOR GAETZ: Yes, ma'am, go ahead,
9 please.

10 SENATOR STORMS: On the issue of the
11 numbering, is the issue of numbering severable?

12 SENATOR GAETZ: Well, that is an
13 interesting question. Severable from what?

14 SENATOR STORMS: Well, if everything else
15 -- I think -- Counsel, do you understand what I
16 am asking?

17 SENATOR GAETZ: Severable -- well, let me
18 just make sure that we are all on the same
19 page, Senator, and then I will defer to
20 counsel. Do you mean severable from our action
21 today, or severable in the legal sense?

22 SENATOR STORMS: No, severable in the
23 legal sense.

24 SENATOR GAETZ: All right.

25 SENATOR STORMS: For the benefit of the

1 non-attorneys, I am asking whether or not if
2 all things are found to be constitutional and
3 solely the numbering is found to be
4 unconstitutional, is that -- does that
5 necessarily require that the entire maps be
6 redrawn, does that provide an impetus for the
7 entire maps to be drawn, or is it severable, or
8 four, do we not know?

9 SENATOR GAETZ: Mr. Bardos?

10 MR. BARDOS: So if we were to pass a plan
11 now and all of the districts in their designs
12 were upheld, but the numbering system were
13 invalidated, then under the Constitution, the
14 Court would have the ultimate responsibility to
15 enact a valid redistricting plan. And we would
16 certainly argue, and I think with a great deal
17 of reason at that point, that the district
18 designs, having been upheld, should stay in
19 place and that the Court should simply impose a
20 different numbering scheme on those districts.
21 So we would certainly make that argument.
22 There is no precedent here, so we don't have
23 any definitive answers, but I think the better
24 opinion probably is that if the district
25 designs were upheld as valid and the district

1 numbering scheme were not, that it would be
2 only the numbers that -- that would be
3 substituted by the Court, and we would
4 certainly make that argument.

5 SENATOR STORMS: Follow-up, please, Mr. --

6 SENATOR GAETZ: Of course, Senator Storms.

7 SENATOR STORMS: So as I understand -- so
8 as I understand what you are saying, Counsel,
9 because this has not ever been litigated before
10 and this has not ever been the issue before the
11 Supreme Court and the bottom line is we don't
12 know, it would be our argument that it would be
13 severable, but we don't know. And, in fact,
14 that is the minority opinion of Justice Canady
15 that the Court should not have intruded into
16 the issue of numbering the districts anyway,
17 but it would seem to me, since that is the
18 minority position, that we are on a less solid
19 ground on that point, because it has not been
20 litigated in the past and the Court clearly
21 appears to believe that this is -- that this is
22 a major item within their purview and goes to
23 Amendment 5 and 6. The minority opinion was
24 that it was not applicable.

25 SENATOR GAETZ: And, Senator Storms, that

1 is a -- I think you make an excellent point,
2 and let me -- let me just tell you that having
3 spent many, many hours over the last few days
4 on the telephone and face-to-face with our --
5 members of our legal team, I think it is fair
6 to say that -- that there is a smell test that
7 is applied to our work, and if on its face --
8 and I am not giving you a legal opinion, but I
9 am telling you what the lawyers have advised me
10 in language that even I can understand, and
11 that is that if the numbering scheme appeared
12 to be a clever methodology that had a
13 predetermined result so that we would know in
14 advance how it would affect people, that that
15 could -- that could certainly put an aroma in
16 the room, which then would affect the rest of
17 our -- of our arguments. So I think you make a
18 very good point, Senator Storms.

19 Anything else at this point? Yes, Leader
20 Rich.

21 SENATOR RICH: Thank you, Mr. Chair.

22 Mr. Guthrie, I just want to check, it
23 appears to me that there are -- just correct me
24 if I am wrong -- 16 districts that were not
25 touched by the revision. Is that correct?

1 SENATOR GAETZ: Mr. Guthrie.

2 MR. GUTHRIE: That is correct, yes.

3 SENATOR RICH: Okay.

4 MR. GUTHRIE: Twenty-four were affected,
5 16 were not.

6 SENATOR RICH: Very good, thank you.

7 SENATOR GAETZ: Other questions at this
8 point. If not, Mr. Guthrie, you are back in
9 the center ring.

10 MR. GUTHRIE: Thank you, Mr. Chairman.

11 Last week we looked in some detail at the
12 area that -- areas that the Supreme Court had
13 focused on when they invalidated the eight
14 Senate districts. The first area of concern to
15 the Supreme Court was the western Panhandle
16 where they -- and let's look at their findings
17 exactly. They said the horizontal orientation
18 of Panhandle districts violates compactness and
19 utilization of political and geographical
20 boundaries. The drawing of the districts
21 sacrificed compactness, a constitutional
22 imperative, in order to keep coastal
23 communities together. Further, although the
24 Senate followed numerous different boundaries
25 when drawing District 1 and 3, often switching

1 between different types of boundaries within
2 the space of a few miles, it sacrificed
3 compactness to create a coastal district and an
4 inland rural district.

5 So the districts that were included in the
6 joint resolution, Joint Resolution 1176 that
7 passed during the regular session, were --
8 split five counties between Escambia and Bay.
9 It put the coastal communities in those five
10 counties in District 1. It put the inland
11 rural communities in District 3. The Court
12 invalidated that approach. The proposed
13 committee substitute radically reforms those --
14 those districts. Escambia County is now
15 entirely contained in a single district. Santa
16 Rosa County is entirely contained also in
17 District 1. Going to the other side of the
18 western Panhandle, Jackson County is now
19 entirely in District 3, as is Washington,
20 Holmes, all of Bay County, all of Walton
21 County, and with Okaloosa County, the county
22 needs to be divided in order for Districts 1
23 and 3 to both have equal population. So what
24 the remedial plan does -- we used as our
25 guideline the suggestion that was made by

1 several of the citizen-submitted plans,
2 including that of the League of Women Voters,
3 and put the northern part of Okaloosa County
4 with Escambia and Santa Rosa County. We used
5 as the boundary line between these two
6 districts, probably the cleanest line and most
7 consonant with the language of the Constitution
8 that we could possibly have found. What -- we
9 used Interstate 10, which was sanctioned by the
10 Supreme Court as an appropriate geographic
11 boundary, we used the city boundary of the City
12 of Crestview, traced around the city boundary
13 of the City of Crestview. Now, we didn't
14 follow every single knit and turn of that
15 boundary, because that would create inholdings
16 and discontinuities that were not desirable.
17 And also in this process, we were equalizing
18 the population. But after we left the City of
19 Crestview, we came out on I-10, and so the
20 boundary for these districts is almost entirely
21 political and geographic boundaries. If we
22 look at District -- District 1 and District 2
23 in the remedial plan, 99 percent of the
24 boundary of -- or one in three, 99 percent of
25 the boundary of those two districts is

1 political or geographic boundaries.

2 SENATOR SACHS: Mr. Chair?

3 SENATOR GAETZ: Yes, Senator Sachs for a
4 question.

5 SENATOR SACHS: Thank you very much.

6 Thank you very much, Mr. Chairman, and this is
7 really to Mr. Guthrie. In the Court's decision
8 to find that this area of northwest Florida,
9 the Panhandle, was not consistent with
10 constitutional requirements in Tier 1 and Tier
11 2, was one of the arguments that the
12 compactness of this area, which is one of the
13 factors that they look at, was not consistent
14 with county lines?

15 SENATOR GAETZ: Mr. Guthrie.

16 MR. GUTHRIE: Thank you, Mr. Chairman.

17 The -- you will recall, Senator Sachs,
18 from the months of public hearings and
19 deliberations that we had in this Committee,
20 the Senate took a view that compactness in the
21 Constitution was not limited to making
22 districts circular or making shapes that were
23 geometrically compact. I believe it was the
24 guidance that staff got from this Committee to
25 use a functional definition of compactness and

1 try to recommend to the Committee in the maps
2 that I drew, recommend districts that held
3 together communities that made sense in terms
4 of providing those communities political
5 representation in the halls of Tallahassee and
6 in the halls of Washington.

7 The -- in this particular case, the --
8 what the majority opinion of the Supreme Court
9 says is that compactness is a visual standard
10 and it is a geometric standard. So the
11 direction that this Committee was going before
12 we had the benefit of the Court's order was one
13 that the Court took issue with, and so they
14 asked us to come up with districts that are
15 geometrically compact, and that is what we have
16 done here.

17 SENATOR SACHS: If I have a
18 follow-through, sir?

19 SENATOR GAETZ: Of course, Senator Sachs.

20 SENATOR SACHS: Thank you, sir.

21 Mr. Guthrie, I believe that the Court
22 referred to some of our many public hearings,
23 that the folks wanted more of a horizontal
24 separation in this area in the northwest, but
25 that -- so some people thought that the coastal

1 areas and the inner areas would be more
2 consistent. However, the Court found that the
3 way to determine compactness in the northwest
4 area would be more aligned county lines. And I
5 think that what you have done very well, you
6 and this staff have now separated these
7 districts in the northwest area to follow a
8 geographic designation that is county line, and
9 I think the Court even referred to they -- all
10 by county line except for Okaloosa, and so that
11 that has been cured, that one argument that
12 they had against communities of interest
13 showing that a county line would be more in
14 tune with the constitutional requirement of
15 compactness. Is that -- is that your idea of
16 curing the -- you know, the alleged defects
17 that the Court found in this northwest area,
18 sir?

19 SENATOR GAETZ: Mr. Guthrie.

20 MR. GUTHRIE: I think that it is fair to
21 say that most Florida counties themselves are
22 relatively compact, unlike city boundaries in
23 the state where cities tend to be non-compact,
24 but county boundaries are more normal and more
25 regular. So if it works out as it does in many

1 cases that by putting whole counties together
2 you can create districts of the appropriate
3 population, I think the Court is saying that
4 that is a desire -- or a good approach for one
5 to consider.

6 SENATOR GAETZ: Leader Smith?

7 SENATOR SMITH: Another thing that came up
8 in the court case, I just want to know,
9 incumbents, are there any incumbents running
10 against each other with the way you have split
11 Okaloosa?

12 SENATOR GAETZ: Mr. Guthrie.

13 MR. GUTHRIE: The answer is I still do not
14 know. I have an idea, but I do not know. At
15 Chairman Gaetz' direction, I and my staff have
16 insulated ourselves from learning where
17 incumbents live, we have insulated ourselves
18 from using political demographics in order to
19 try to engineer outcomes, we have -- we did not
20 do that at the start, we did not do that along
21 the way and we still have not done that. So I
22 do -- I happen to have visited Senator Gaetz,
23 you know, one of his homes in the past year. I
24 can tell you where that one is.

25 SENATOR GAETZ: Unlike Senator McCain, I

1 know how many I have.

2 MR. GUTHRIE: I have sent him Fed Ex
3 packages to another of his homes, so if I
4 wanted to look up on the map where he lived, I
5 could do that, but I haven't done that.

6 SENATOR GAETZ: Senator Smith.

7 SENATOR SMITH: And I understand that and
8 can appreciate that, Mr. Guthrie. The concern
9 is, I mean, when the Court looked at it, they
10 looked and they specifically mentioned, you
11 know, incumbent protection, and so at some
12 level and at some point, I think that is
13 something that we should look at so we don't
14 have a prima facie case of no incumbents
15 running against each other.

16 I think you did a pretty good job up here,
17 but as we go down the map -- and I understand
18 your standpoint of not wanting to know so you
19 can not be looked at incumbent protection, but
20 on the other side, if we don't know, we can
21 still be charged with that. So that is
22 something that we should look into as we go
23 down this map.

24 SENATOR GAETZ: And that -- good point,
25 Senator Smith. And let me just say, because

1 this -- the question is, in effect, about me, I
2 live at 24 Bluewater Point in Niceville, and if
3 you look at that map, Niceville is in the
4 southeast corner of Okaloosa County.

5 SENATOR SMITH: Okay.

6 SENATOR GAETZ: My good friend and
7 colleague, Senator Evers, lives in Baker.
8 Baker is in northwest Okaloosa County. The
9 configuration -- and let me ask Mr. Guthrie to
10 either confirm or deny this. The configuration
11 of Okaloosa County which is in the PCS is one
12 that was recommended by the League of Women
13 Voters, is that not correct?

14 MR. GUTHRIE: That is correct.

15 SENATOR GAETZ: Okay. For the record, and
16 the records are public, you can see where I own
17 property, and my wife was actually looking at
18 some redoing of some property that we own in
19 Escambia County last night, so I have the
20 advantage of having a wife who does pretty well
21 with real estate, so I could -- I can probably
22 -- unfortunately, Senator Montford has not
23 allowed me up until now to own anything in
24 Jackson, Washington or Holmes County, but that
25 is always a possibility.

1 Leader Rich.

2 SENATOR RICH: Thank you, Mr. Chair.

3 So I just want to clarify. So are you
4 saying, Mr. Guthrie -- or Senator Gaetz, you
5 can answer this as well -- so we don't know --
6 the official position is we don't know in this
7 map if there are any incumbents running against
8 each other, that is the official position?

9 SENATOR GAETZ: Well, Leader Rich, we know
10 what we read in the papers, and, of course, the
11 papers are always correct, and so we know that
12 there are incumbents that are pitted against
13 each other based on what the media has told us
14 and that there are well-known challengers who
15 are pitted against each other, but I -- if this
16 Committee directs that -- that the professional
17 staff identify on the maps where incumbents and
18 challengers live, we will take this Committee's
19 instructions and do that. Up until now, we've
20 -- we've not felt it appropriate to do that
21 because we thought that it might suggest
22 intent, but we will be happy to take whatever
23 instructions this Committee gives us.

24 Senator Siplin.

25 SENATOR SIPLIN: Thank you, Mr. Chair.

1 What is the -- what is the law on
2 residency? Say, for instance, it has been
3 declared constitutional, the current map that
4 we are looking at right now, and then Senator
5 Gaetz moves to District 1, would he be
6 prevented from running from office there?

7 SENATOR GAETZ: Since that is a legal
8 question, we will defer to Mr. Bardos.

9 MR. BARDOS: My understanding is that the
10 candidate must reside in the district as of the
11 general election day.

12 SENATOR SIPLIN: Okay. Mr. Chair?

13 SENATOR GAETZ: Yes, Senator Siplin.

14 SENATOR SIPLIN: So since I am allegedly
15 termed out and I am in District 19 or District
16 12, if I were to move to the so-called Hispanic
17 seat, would I be allowed to run for that seat?

18 SENATOR GAETZ: I don't think so, but we
19 will ask Mr. Bardos.

20 MR. BARDOS: Right, the answer would be
21 no. The term limits provision is different
22 from the residency provision, and that would
23 prevent someone who has already served eight
24 years in the Senate from running for any Senate
25 seat.

1 SENATOR GAETZ: But, Senator Siplin, if
2 Senator Evers were to move to Niceville and if
3 Senator Evers were to teach me how to operate
4 his tractor and I were to move to Baker, that
5 would be permissible, because neither of us are
6 termed out at this point.

7 SENATOR SIPLIN: I mean -- may I follow
8 up?

9 SENATOR GAETZ: Of course you can.

10 SENATOR SIPLIN: I am not clear on this.
11 So I am in District 12 right now, and there is
12 also District 14. So if I were to move from
13 District 12, that is constitutional by the
14 Supreme Court as of qualifying date, and move
15 to District 14, you are saying I wouldn't be
16 able to run for that seat?

17 SENATOR GAETZ: Mr. Bardos.

18 MR. BARDOS: The term limits provision
19 really does not take notice of which district
20 you are running in, but what office you are
21 running for. So if one is term limited from
22 the Senate, then simply changing districts
23 wouldn't -- wouldn't relieve one from that
24 encumbrance.

25 SENATOR GAETZ: Senator Latvala.

1 SENATOR LATVALA: Thank you, Mr. Chairman.

2 Three quick things. First of all, to
3 Senator Siplin, in 2002 when I was looking at
4 trying to stay here, I looked at every scheme
5 you could possibly think of and then some to
6 how to get around term limits, and there's not
7 any.

8 The second thing, Mr. Chairman, I own a
9 house in Steinhatchee in Senator Montford's
10 district, and for the right price, if you'd
11 like it, we could make that happen, but the --

12 SENATOR GAETZ: My wife is watching right
13 now.

14 SENATOR LATVALA: The third thing, the
15 serious question is, it appears that from
16 Senator Smith's question, the inference is that
17 perhaps we should like make a situation happen
18 that we have incumbents running together, and
19 in the same district, and what I would like to
20 ask our counsel is that if we -- if we set upon
21 ourselves to do that, would we not in fact be
22 violating the Constitution if we set upon
23 ourselves to -- we established a goal that we are
24 going to have six incumbents have to run
25 against each other, would we not on the face of

1 it be violating the Constitution by -- by
2 making decisions based on where incumbents
3 live?

4 SENATOR GAETZ: Mr. Bardos, did you get
5 that question?

6 MR. BARDOS: Yes, I did.

7 SENATOR GAETZ: Could you respond, please?

8 MR. BARDOS: Sure. Right, the -- I think
9 if we were deliberately to pair incumbents
10 to -- then we would be intentionally
11 disfavoring. So it is a two-way street. The
12 Constitution prohibits an intent to favor, but
13 it also prohibits an intent to disfavor, and I
14 think the Court's opinion is quite clear that
15 the purpose of the provision was to ensure
16 neutrality and drawing districts that don't
17 have the intent to favor or disfavor
18 incumbents.

19 SENATOR GAETZ: Anything else? Yes, I'm
20 sorry, Senator Sachs, and then we will move
21 down the line.

22 SENATOR SACHS: Thank you very much, Mr.
23 Chairman.

24 I think that what we are looking at is we
25 need to go back to the Supreme Court's decision

1 when it looked at -- when it advised us,
2 recommended to us, that we look at every area
3 of the eight that they referred to in the light
4 that they gave us the constitutional two-tier
5 structure. And when I asked the questions
6 about compactness and county lines, the Court
7 specifically said for this northwest area. The
8 way it review this is in -- is using the prism
9 of compactness that they define as that
10 constitutional requirement. And they referred
11 to this area that each of -- that this district
12 that is -- which is in blue, is defined by the
13 county lines, except for Okaloosa, which they
14 found to be fine.

15 So I think it is interesting as we go
16 through the map to use the constitutional basis
17 that the Supreme Court referred to in its very
18 first part of its decision, which is we look at
19 everything not in relation to incumbent or
20 non-incumbent or other factors such as
21 communities of interest, but we look at the
22 prism, through the prism of that first tier,
23 which is compactness, which is defined by, in
24 their eyes, geographical designations of -- of
25 county lines. So I think that as we go through

1 the whole map, Mr. Chairman, we need to make
2 sure that we follow that Supreme Court -- we
3 should follow the Supreme Court decision in
4 looking at this in terms of compactness, which
5 is beautifully expressed in this first part of
6 the Panhandle, which is now we are looking at
7 it in terms of county lines. And I just wanted
8 to remind us that that is what we need to look
9 at, every area of the map, specifically those
10 eight sections that they referred to.

11 SENATOR GAETZ: Thank you, Senator Sachs.
12 I would just point out, just so we are all on
13 the same page, if you look at Escambia County
14 by itself, it looks a lot like New Jersey and
15 hardly compact by any mathematical formula, but
16 when taken together with Santa Rosa, now it
17 starts looking compact.

18 Senator Gibson and then Senator Montford.

19 SENATOR GIBSON: Thank you, Mr. Chair.

20 My question kind of went to the whole
21 compactness thing, too, because it seems
22 that the -- well, first of all, there is no
23 constitutional definition for compact, but it
24 seems that the Court talks about visually
25 compact. I am not sure what that is either.

1 So my question goes to how have you determined
2 what number or distance or something is fitting
3 whatever we are using as compact, not only in
4 this area, but throughout the state? So are
5 there differences in terms of where the lines
6 from a district start and end, and if it is not
7 a straight line, if it is more like a circle,
8 is there a certain circumference where
9 districts are circular as opposed to elongated?
10 How are we using that not only in this area
11 again -- sorry to be repetitive -- in this area
12 of the state, but in the rest of the state,
13 because when you look at it, none of it looks
14 the same?

15 SENATOR GAETZ: Great question, and it
16 leads -- there are actually three measurements
17 of compactness, all of which we have used, all
18 of which we will report to you, but, Mr.
19 Guthrie, can you articulate those three methods
20 and what they mean and maybe give Senator
21 Gibson an example?

22 MR. GUTHRIE: I will get to that, and
23 actually, there are five numbers that I and my
24 staff have been looking at in terms of metrics
25 on the compactness of districts, but before I

1 go there, let's talk about the visual test that
2 the Supreme Court's opinion talks about and how
3 that applies.

4 These formulas that are used for measuring
5 compactness as a geometric property of
6 geography is -- are really pretty arcane and
7 not much use to people who are drawing maps.
8 So as we are in the business of trying to draw
9 districts or make maps that will conform with
10 the judgment of the Court, the geometric
11 compactness matters, we really used our eyes as
12 the -- as the initial guide of how -- how to
13 create something that looked like it was
14 compact and looked like it would function as a
15 compact district. Then when we were finished
16 drawing the plan, we would go through and look
17 at the entire plan, and in terms of, as I said,
18 five metrics that I considered, those five are
19 what is the outer perimeter of the district.
20 If you had to walk the boundary of that
21 district every step of the way, how far would
22 you go, what is the outer perimeter? That is a
23 general measure of how far-flung the district
24 is and also of how irregular the boundary is.
25 So just as a simple measure that we all can

1 understand, how far would you have to walk to
2 trace the border of that district every step of
3 the way?

4 The next factor that we like to look at is
5 -- and you alluded to it, Senator Gibson -- is
6 the end-to-end distance or -- of the border.
7 So you take the two furthest most points of the
8 district and just measure as the crow flies how
9 far apart are they. So a district that is in
10 an urban area is going to have a very short
11 end-to-end distance. A district that is in a
12 rural area, such as Senator Montford's, no
13 matter how compact it is, it is going to have a
14 lengthy end-to-end distance.

15 And then we get to the three most common
16 geometric measures of compactness, two of which
17 were referred to by the Supreme Court in its
18 opinion, a third which is of equal weight among
19 the political scientists and mathematicians who
20 like to look at geometric compactness, and
21 let's go through those.

22 We will start with the two that were --
23 were alluded to in the Supreme Court's opinion.
24 The first is what they called the Reock score
25 or the Reock ratio. How we compute the Reock

1 ratio for a district is we -- I wish I had some
2 toys here to show you how this works, but you
3 squeeze down a circle until the circle won't
4 squeeze anymore, fitting the district inside of
5 it, okay, you squeeze a circle around the
6 district. And then the Reock ratio is simply
7 the ratio of the area of the district, what is
8 the square mileage of the district, versus the
9 square mileage, π equals $2R$ square, the square
10 mileage of the circumscribing circle. A lot of
11 political scientists call that the dispersion
12 ratio instead of the Reock score. A lot of
13 people have trouble pronouncing the term Reock.
14 Dispersion is a little bit easier. So that is
15 the Reock score. It is basically a measure of
16 how circular is the district. If the district
17 is circle -- is a circle, it will have a score
18 of one. If the district is very, very
19 irregular -- excuse me, not irregular. If the
20 district is very long and very narrow, it will
21 have a very low Reock score. So Reock is a
22 measure of how circular is the district.

23 The second measure that the Supreme Court
24 alluded to in its opinion is called the convex
25 hull ratio. It is similar to the dispersion

1 ratio or the Reock score, but there is a
2 difference. Instead of saying we are going to
3 squeeze a circle to fit around the district,
4 the convex hull wraps a string around the outer
5 edge, or imagine putting a rubber band around
6 the outer edge of your district, okay. That
7 creates a geometric shape which mathematicians
8 call a convex hull, and what convex hull simply
9 means is it doesn't have any intrusions into
10 it. All of the angles of that shape are convex
11 angles. Taking you back to elementary school
12 geometry here, I know. That is the convex
13 hull. The convex hull ratio is computed very
14 similarly to the Reock score or the dispersion
15 ratio. It simply is the area of the circle --
16 or, excuse me, the area of the district, again,
17 divided by the area of this convex hull shape.
18 So, again, the -- a score of one is as high as
19 you can get. That is a perfectly convex
20 district. A score of zero means that the
21 district has a lot of protrusions. So if you
22 had a district that was shaped like a C, okay,
23 that is -- that is an example of a district
24 that would have a very low convex hull score,
25 because the circle that surrounds it would be

1 large -- and can you visualize what I am
2 talking about? So a C-shaped district or a
3 state -- well, no, a C-shaped district would be
4 the best example of where the convex hull will
5 penalize you with a low -- a low score.

6 The third common -- it is really one of
7 the two most common measures used by
8 mathematicians and political scientists who are
9 writing all of the academic articles about
10 geometric compactness, it is pretty easy to
11 calculate as well, and ease of calculation is
12 another reason why some of these measures are
13 popular. The third measure is what they call
14 the perimeter score, perimeter ratio, or it is
15 also called the Polsby-Popper score of a
16 district. And what that measures -- again, I
17 will give you a sort of geometric explanation.
18 Remember in the -- with the perimeter, we were
19 tracing the boundary of the district and
20 measuring how -- how long that boundary is.
21 What the Polsby-Popper score wants you to do is
22 you measure that distance, you wrap the string
23 around every nook and cranny of the district,
24 but then we are going to blow it up, we are
25 going to blow up that string, the length of

1 that string, to make the largest circle that we
2 can with a circumference the same as the length
3 of that string. And then the ratio is the same
4 as before, you take the area of the district,
5 divided by the area of that circle, we call it
6 the perimeter circle, and that is your
7 Polsby-Popper score. So what that penalizes
8 you for is a district that has a lot of
9 irregularities in the border.

10 And it is probably useful, particularly in
11 a state like Florida, to look at all of these
12 scores in order to get an assessment of whether
13 districts are geometrically compact or not.
14 There are some areas of the state where --
15 where try as you might, you are not going to
16 make circular districts. There are areas where
17 creating circular districts would lead to
18 bazaar outcomes. You could draw a circular
19 district that put Ft. Myers and West Palm Beach
20 together into the same district and had a very
21 good Reock score, but nobody would say that
22 that is a compact district.

23 So those are your geometric measures. We
24 have been calculating them since December. I
25 have never bored -- I was kind, I have never

1 bored this Committee with that explanation, but
2 now that we know that the Supreme Court, like
3 us, is looking at geometric compactness, and
4 that our plans will be evaluated in terms of
5 how it scores on geometric compactness, I think
6 it is appropriate for the Committee to hear the
7 full -- the full-fledge explanation, and that
8 was a lot of geometry. Would you all like to
9 pose some questions on that?

10 SENATOR GAETZ: No, I got -- I got a C in
11 geometry. It was my worst grade. But we
12 also -- it is fair to say, I think, Mr.
13 Guthrie, that we have those scores for each
14 district, and that will be remarked to.

15 Senator Gibson to follow up, and then we
16 will go to Senator Montford.

17 SENATOR GIBSON: Thank you, Mr. Chair. I
18 just have two follow-ups.

19 One is, do you apply all of these formulas
20 to the districts as they are currently drawn?
21 And the second question then goes to whether
22 you use all of them in every district, or you
23 decide to use -- does one work one place and
24 not the other, and how do you decide which one
25 you are going to use in what area of the --

1 SENATOR GAETZ: Mr. Guthrie.

2 MR. GUTHRIE: Thank you, Mr. Chairman.

3 We perform the calculations on every
4 district in every plan. So anytime since
5 December -- that is when we enhanced our data
6 reports that we post on-line, in mid-December.
7 I know that date because you remember Bruce
8 King? Bruce King was the one who liked to draw
9 square districts, he was one of our public
10 submitters, and we had some correspondence
11 going back and forth with Bruce King over the
12 years -- or over the months, and I found an
13 e-mail that I sent to him on December 15th that
14 said, okay, you've been asking us to put our
15 geometric measures on-line, let me tell you
16 where you can go to find them.

17 Now, we do not calculate the ratios, okay.
18 What we do is provide in the shape files that
19 are available as downloads on the Senate
20 redistricting site, all of the geometric
21 shapes: The circumscribing circle, the
22 perimeter circle, the area of the district,
23 everything that you need in order to calculate
24 the ratios yourself.

25 I am a bit offended, I must say, by folks

1 who throw out these scores and talk about what
2 you need and what you don't need and couldn't
3 explain for the life of them what the -- what
4 the basis of those scores is, and so I didn't
5 want to confuse the issue. I knew that someday
6 in court I would have an opportunity to talk
7 about Reock scores and Polsby-Popper scores and
8 all of the other measures of compactness, and
9 just left it out of the legislative debate, but
10 all of the raw data that are required for
11 calculating those have been in the shape files
12 that are on the Senate website. They are
13 packaged in a DBF file that is part of the
14 shape file, and our documentation says -- tells
15 folks who are -- who understand what these
16 measures mean, how they can get them, how they
17 can apply them.

18 SENATOR GAETZ: But in answer to it
19 Senator Gibson's question, and I don't mean to
20 put words in your mouth, Senator Gibson, but I
21 think one of your points was in describing and
22 then ultimately before the Supreme Court in
23 defending those districts, we are making a
24 consistent use of these methodologies. We are
25 not saying that we are going to use one

1 methodology one place, and another one in
2 another place, and have an inconsistent defense
3 of our plan. We are able to describe and
4 defend the plan in a consistent manner. Is
5 that not the case?

6 MR. GUTHRIE: That is correct.

7 SENATOR GAETZ: Okay. And now we will go
8 to Senator Montford and then Senator Diaz de la
9 Portilla and then we will go back to Senator
10 Sobel. Senator Montford.

11 SENATOR MONTFORD: Thank you, Mr. Chair.
12 A question to Mr. Guthrie.

13 Mr. Guthrie, when -- throughout this
14 process for the last nine months, I think we
15 have off and on had discussion of which of the
16 criteria that we are using is most important,
17 is this one the most important, this one,
18 obviously -- and some may be in conflict. Did
19 the Court in either directly or indirectly rank
20 the criteria, if you will; in other words, one
21 might be more important than the other?

22 SENATOR GAETZ: Mr. Guthrie.

23 MR. GUTHRIE: I believe that the Court did
24 do that. Perhaps we could refer to Mr. Bardos
25 for explaining how, but, yes, I believe that

1 the Court gave us good direction on how they
2 thought these standards should be defined and
3 how they could be applied in unison in drawing
4 and evaluating districts.

5 SENATOR GAETZ: Mr. Guthrie. I'm sorry,
6 Mr. Bardos.

7 MR. BARDOS: The Court followed the
8 hierarchy established by the Constitution,
9 which shows two tiers. So in the first tier,
10 we have the prohibition against political
11 favoritism and the protection for minority
12 voters and the requirement of contiguity, and
13 in the second tier, we have compactness and
14 equal populations and political and
15 geographical boundaries. So the Court followed
16 the constitutional -- constitutional hierarchy.

17 It did note in the second tier that the
18 population requirement and the requirement to
19 follow political and geographical boundaries
20 are qualified by the words "practicable" and
21 "feasible," and the compactness requirement is
22 not. So it recognized that where there are
23 those qualifications, there is -- there is
24 perhaps more -- more flexibility, or at least a
25 recognition that it is not possible in the case

1 of political and geographical boundaries, for
2 example, to follow every political and
3 geographical boundary; whereas, the compactness
4 requirement was stated far more categorically.
5 So to that extent, there are those differences,
6 but the Court followed the hierarchy
7 established in the Constitution using the
8 two-tier system.

9 SENATOR GAETZ: Senator Diaz de la
10 Portilla.

11 SENATOR MONTFORD: Mr. Chair, I got --

12 SENATOR GAETZ: I apologize, Senator
13 Montford. Did you wish to follow up?

14 SENATOR MONTFORD: Yes, thank you.

15 SENATOR GAETZ: Please.

16 SENATOR MONTFORD: If you look at the
17 districts that the Court identified, was there
18 a consistency in the concerns brought by the
19 Court? In other words, was there one
20 consistent concern, or was it, you know, we
21 don't like this one about this one and that
22 one?

23 SENATOR GAETZ: Mr. Guthrie.

24 MR. GUTHRIE: I am sure that question was
25 not directed at me. I -- the Court gave us

1 direction with each of the eight areas of
2 concern, and in coming up with this proposed
3 committee substitute, what I and my staff have
4 prepared for you is our best recommendation as
5 to how to address the Court's concerns with
6 those individual areas.

7 SENATOR GAETZ: I think, Senator Montford,
8 that a layman's reading would suggest that
9 while the Court had a series of consistent
10 concerns, that there were specific concerns
11 addressed to specific districts. So there was
12 not one cookie-cutter answer that could have
13 answered all of the concerns that the Court
14 articulated for all of the districts. Is that
15 fair, Mr. Bardos?

16 MR. BARDOS: I think that is fair, yes.

17 SENATOR GAETZ: Did you have something
18 else, Senator Montford?

19 SENATOR MONTFORD: Yeah, I guess -- I
20 mean, for example, compactness, I mean, was
21 that the overriding concern across all the
22 districts, or was -- I gather it was -- each
23 individual district had its own concern
24 expressed by the Court, that is a better way to
25 say it, is that right?

1 SENATOR GAETZ: Mr. Bardos, could you
2 respond to that?

3 MR. BARDOS: I didn't hear.

4 SENATOR MONTFORD: Each of the districts
5 had their own individual concerns as expressed
6 by the Court, so we looked at these
7 individually district by district?

8 MR. BARDOS: Right, sir.

9 SENATOR MONTFORD: Okay. Thank you.

10 SENATOR GAETZ: Okay. Senator Diaz de la
11 Portilla.

12 SENATOR DIAZ DE LA PORTILLA: Thank you,
13 Mr. Chairman. I am going to have to use
14 Senator Benacquisto's mike.

15 SENATOR GAETZ: It will cost you.

16 SENATOR DIAZ DE LA PORTILLA: By the way,
17 I would like to compliment you on your haircut.
18 It is very Brian Pitts, high and tight, very
19 nice.

20 SENATOR GAETZ: It was \$12 and worth every
21 penny of it.

22 SENATOR DIAZ DE LA PORTILLA: Worth every
23 penny. Thank you, Mr. Chairman.

24 My question is to -- just to follow up on
25 a question asked previously by Senator Latvala,

1 it's to Mr. Bardos. While the Court did give
2 us specific direction on eight districts that
3 it found deficient, and I guess ostensibly by
4 not really commenting on any of the other
5 districts, kind of said those were okay, my
6 understanding of Mr. Bardos' answer to Senator
7 Latvala's question was that nothing would
8 prevent the Court from taking a new look or a
9 re-look at every district once the PCB --
10 assuming the PCB is passed and moves forward.
11 I just want to get some clarification from Mr.
12 Bardos on that. Is that correct, is my
13 understanding --

14 SENATOR GAETZ: Mr. Bardos, are you
15 prepared to psychoanalyze the Supreme Court?

16 MR. BARDOS: Well, we are in uncharted
17 waters, so I think the best answer is we don't
18 know the answer. I do think though that there
19 are -- there are some observations that the
20 Court made in its opinion that give us some
21 assurance that it did look at all of the
22 districts. So, for example, it says generally
23 statewide that there -- that the minority
24 voting rights provisions were complied with.
25 It goes through and it identifies those

1 districts which are visually non-compact or
2 which have low compactness measurements. So I
3 think the Court does make some statewide
4 conclusions in its opinion, and it also gives
5 specific instructions which were on one of the
6 slides shown earlier, as to what the
7 Legislature should do when it reconvenes. So
8 while nothing -- while we don't know the answer
9 to the question, we do know that the Court gave
10 at least some indications that it did take a
11 statewide view with respect to at least some of
12 the standards.

13 SENATOR DIAZ DE LA PORTILLA: Follow-up,
14 Mr. Chair?

15 SENATOR GAETZ: Yes, of course.

16 SENATOR DIAZ DE LA PORTILLA: My question
17 is -- is a legal one, not a psychoanalysis one.
18 My legal question is, is there any legal
19 impediment to the Court taking a look at all
20 the districts de novo once the new map goes
21 back?

22 SENATOR GAETZ: Mr. Bardos.

23 MR. BARDOS: There is no clear legal
24 impediment. There will be arguments made on
25 both sides, I am sure, but there is no clear

1 legal impediment.

2 SENATOR GAETZ: Senator Sobel, you are
3 recognized.

4 SENATOR SOBEL: Thank you, Mr. Chair. I
5 want to go back to the residency requirement
6 that Mr. --

7 SENATOR GAETZ: Senator Sobel, could you
8 speak a little closer to the mike, please,
9 ma'am?

10 SENATOR SOBEL: Yes. I want to go back to
11 the residency requirement that we were talking
12 about, and I am looking at Article III of the
13 Constitution of Florida about qualifications.
14 It says, "Each legislator shall be at least 21
15 years of age, an elector and resident of the
16 district from which elected, and shall have
17 resided in the state for a period of two years
18 prior to election."

19 So for clarification for Mr. Bardos, the
20 person, while they are running, does not have
21 to live in the district that they are seeking
22 to be elected in, is that correct?

23 SENATOR GAETZ: Mr. Bardos?

24 MR. BARDOS: That is my understanding. I
25 haven't looked at that provision in a long

1 time, but that is my understanding.

2 SENATOR SOBEL: He said yes?

3 SENATOR GAETZ: Did you wish to follow up,
4 ma'am?

5 SENATOR SOBEL: I couldn't hear what he
6 said. He said yes?

7 SENATOR GAETZ: Mr. Bardos, could you
8 articulate that again, please?

9 MR. BARDOS: Yes, I haven't looked at that
10 provision in a long time, but that is my
11 recollection that that is correct.

12 SENATOR SOBEL: Okay, thank you.

13 SENATOR GAETZ: And just so you are aware,
14 Cynthia Tunnickliff is part of our legal team,
15 and she is the young lady sitting next to Mr.
16 Guthrie, so would you care to comment on that
17 for Senator Sobel? Into the mike, please.

18 MS. TUNNICLIFF: I agree with Mr. Bardos.
19 I think you have to be there -- you have to be
20 a resident on the date of the election --

21 SENATOR GAETZ: I'm sorry, ma'am, we can't
22 hear you. Into the mike, please.

23 MS. TUNNICLIFF: Yes, I think -- I agree
24 with Mr. Bardos, you have to be a resident of
25 the district at the time of the -- you are

1 elected.

2 SENATOR GAETZ: One more time,

3 Ms. Tunnickliff. Into the mike loudly.

4 MS. TUNNICLIFF: Mike doesn't work
5 apparently. I agree with Mr. Bardos.

6 SENATOR SOBEL: She concurs.

7 SENATOR GAETZ: All right. We will do
8 this. Let's -- okay, everybody, you know, calm
9 down. Mr. Bardos is going to articulate the
10 answer -- first he is going to articulate the
11 question and then he is going to give the
12 answer, and then Ms. Tunnickliff will have an
13 opportunity to say whether she agrees or not.
14 Go ahead, Mr. Bardos.

15 MR. BARDOS: So my understanding --

16 SENATOR GAETZ: Excuse me. May we have
17 order in the back, because there are Senators
18 who cannot seem to hear the questions and the
19 answers.

20 MR. BARDOS: My understanding of the
21 question is when must a candidate reside in the
22 district, and my recollection is that the
23 candidate must reside in the district as of the
24 general election day, and not necessarily
25 during the campaign before the general

1 election.

2 SENATOR GAETZ: Ms. Tunnickliff, into the
3 mike, do you concur?

4 MS. TUNNICLIFF: I concur with that, yes.

5 SENATOR GAETZ: All right.

6 SENATOR SOBEL: I --

7 SENATOR GAETZ: Okay, Senator Sobel, did
8 you wish to follow up? Senator Sobel, could
9 your turn on your mike?

10 SENATOR SOBEL: Okay, my mike is on now.
11 I think that what the general practice is, and
12 I am not an attorney, and what the
13 interpretation is is that if you are running
14 for a seat, that when you are elected, when you
15 are elected or when you are sworn in, you must
16 live in the district.

17 SENATOR GAETZ: That is exactly what Mr.
18 Bardos and Ms. Tunnickliff have said.

19 SENATOR SOBEL: He is saying it a little
20 bit differently. Thank you.

21 SENATOR GAETZ: We are all together on
22 that issue, I think.

23 Is there -- let's see. We had Senator
24 Thrasher and then Senator Simmons. Senator
25 Thrasher?

1 SENATOR THRASHER: Thank you,
2 Mr. Chairman.

3 I kind of want to get back to what we
4 originally started talking about, and that is
5 the Senate Joint Resolution 2-B, and basically
6 get into where we started, which were Districts
7 1 and 3 as numbered in that joint resolution.
8 And, you know, I appreciate Mr. Guthrie's
9 incredible analysis of the different kinds of
10 formulas and all that go into all that, and
11 that is good, but I want to emphasize one
12 thing, and it kind of goes along with what
13 Senator Sachs said, for me, anyway, and I would
14 like to do this as we move through the Senate
15 joint resolution, particularly in the eight
16 districts that the Court said that we must look
17 at.

18 Now, granted, as Senator Diaz de la
19 Portilla said, I think the Court can do
20 whatever they want to. We could send -- we
21 could send maps to them until the cows come
22 home, and they are going to still look at the
23 entire map and decide whatever they want to
24 decide. It seems to me, though, the best
25 evidence of what we ought to be doing is what

1 they said in their opinion, and that is to look
2 at the eight districts that they had some
3 serious objections to. So as we go through
4 these -- and it is a rhetorical question to
5 some extent. Senator Sachs raised it. We have
6 what the Court said in the eight districts in
7 their opinion, we have your new proposed Senate
8 joint resolution, and I just want -- from a --
9 as a Senator sitting here, one of which 40 will
10 vote on ultimately, but you all are our
11 professional staff, Mr. Bardos is our legal
12 counsel, Ms. Tunnick is there, too, I want
13 just as we go through this your assurance that
14 based upon what the Court gave us to look at in
15 these eight districts, that you are satisfied
16 that this Senate joint resolution complies to
17 the best of our ability with what they
18 suggested we needed to correct. And as we go
19 through the map, I would like to have your
20 opinion on that so -- because I just think that
21 is ultimately what we are here to do. And it
22 is really not a question so much, Mr. Chairman,
23 but an observation. And it seems to me that,
24 you know, as we go through this map, as you
25 start in Senate Districts 1 and 2, I have read

1 the opinion, they had some problems with
2 compactness, they had some problems with --
3 there were eight counties, you basically now
4 have one county that is split among those eight
5 counties in two districts. Seems to me we are
6 complying. But I want, as a Senator sit here
7 as we evaluate this, for you to be able to tell
8 me that best -- on the best efforts, best
9 information we have, legally and otherwise, we
10 have complied with what the Supreme Court said.

11 SENATOR GAETZ: So, Mr. Guthrie, let's put
12 the question in a pointed sense. As to the --
13 as to the northwest Florida districts that are
14 on the map in the overhead, in the application
15 of the compactness scores, in the application
16 of the other constitutional standards, bearing
17 in mind what the Supreme Court has written in
18 its opinion, is it your professional judgment
19 that the proposed committee substitute is a
20 faithful approach to our responsibilities and
21 complies with the law?

22 MR. GUTHRIE: I believe that Districts 1
23 and 3 as reconfigured in the -- in the proposed
24 committee substitute conform to the judgment of
25 the Court, comply with the standards set in the

1 State Constitution and therefore are valid.

2 SENATOR GAETZ: And just, again, to put a
3 fine point on it for the record, as to the one
4 county that is split, it is my recollection,
5 and correct me if I am wrong, that it is
6 generally split along the lines that the League
7 of Women Voters recommended it be split. Is
8 that true?

9 MR. GUTHRIE: It is true that the League
10 of Women Voters had the Escambia and Santa Rosa
11 put together with northern Okaloosa County, and
12 that they had southern Okaloosa County
13 connecting to a district that went toward the
14 east --

15 SENATOR GAETZ: Okay.

16 MR. GUTHRIE: -- that the exact alignment
17 of the boundary in the vicinity of Interstate
18 10 was different. I believe they might have
19 used the Yellow River rather than Interstate
20 10, but the general orientation of the
21 districts, the fact that they went around the
22 City of Crestview, that was similar between the
23 two maps.

24 SENATOR GAETZ: Okay. Are there further
25 questions here before we go to Senator Simmons?

1 Senator Simmons, and then we will go back
2 to Senator Storms.

3 SENATOR SIMMONS: Thank you, Mr. Chair,
4 and what I would like to do is ask legal
5 counsel a couple of questions, because I have
6 reviewed the Florida Supreme Court decision. I
7 have reviewed the Constitution, and I believe
8 that we do have significant direction out of
9 this 234-page opinion. And I am looking at
10 page 188 where the Florida Supreme Court tells
11 us the scope of the review that we are supposed
12 to engage in here in the Legislature, and, of
13 course, having lived with the courts, I know
14 how difficult it is to sometimes divine what
15 they have said, but I think that they have
16 tried very hard and I think very well to give
17 us a road map as to what we are supposed to do
18 here today and this week and for the next
19 several days, but they specifically say on page
20 188, "Because we have now defined Florida's new
21 constitutional standards through this opinion,
22 this Court has provided the Legislature with
23 parameters for the application of the standards
24 to the apportionment plan. Through our
25 interpretation and review, we have attempted to

1 provide the Legislature with direction as to
2 the specific constitutional problems that we
3 conclude have been proven and to the general
4 problems with the entire Senate plan, including
5 the renumbering of the districts."

6 So they have told us that, in fact, they
7 have reviewed the entire plan, and, of course,
8 there were three categories that we have within
9 the Supreme Court's decision: Those that the
10 coalition objected to that the Court overruled
11 and found specifically to be valid, those that
12 no one challenged, and then those that were
13 challenged and the Court found problems with
14 and directed us to do something about.

15 But reading on, on page 188, it says, "As
16 the next phase of this apportionment process
17 begins, we are confident the Legislature will
18 apply these standards in a manner consistent
19 with the interpretation we have heretofore
20 provided, keeping as its goal a Senate plan
21 that would pass constitutional muster. The
22 Court views its constitutional obligation of
23 drawing a plan to be the course of last
24 resort."

25 Then turning to page 189, they are very

1 clear as to what we are supposed to be doing.
2 They say at the bottom paragraph, "We have held
3 that Senate Districts 1, 3, 6, 9, 10, 29, 30
4 and 34 are constitutionally invalid. The
5 Legislature should remedy the constitutional
6 problems with respect to these districts,
7 redrawing these districts and any affected
8 districts in accordance with the standards as
9 defined by this Court, and should conduct the
10 appropriate functional analysis to ensure
11 compliance with the Florida minority voting
12 protection provisions, as well as the two-tier
13 standards of equal population, compactness and
14 utilization of existing political and
15 geographic boundaries." Goes on to talk about
16 the City of Lakeland.

17 Then it says, "In redrawing the
18 apportionment plan, the Legislature is by no
19 means required to adopt the coalition's
20 alternative Senate plan. Finally, we have held
21 that the numbering scheme of the Senate plan is
22 invalid. Accordingly, the Legislature should
23 renumber the districts in an incumbent-neutral
24 manner."

25 So what they have done is in accordance

1 with the Constitution, which says they shall
2 enter judgment, they go ahead and they enter a
3 judgment, and that judgment is one we are
4 supposed to comply with, and I think they have
5 made it pretty clear that we are supposed to
6 deal with these districts that they have found
7 to be invalid and anything that is affected
8 once we correct the problems that they have
9 found. And I think that is the scope, because
10 that comports with what I would believe is
11 common sense, and also with judicial economy
12 and the economy of -- and the efficacy of the
13 process itself; that is, we send something over
14 to the Florida Supreme Court, they find out
15 what is wrong with it, and then they tell us
16 what is wrong with it in a judgment, and we are
17 supposed to -- using the constitutional
18 language -- we are supposed to conform to the
19 judgment of the Supreme Court. So that means
20 we are supposed to follow what they have told
21 us to do. They have given us a road map, there
22 are eight districts, and then anything that
23 touches those eight districts that need to be
24 cleaned up, and also -- they also said we need
25 to do the functional analysis with respect to

1 several of the minority districts, we need to
2 do that functional analysis, we need to put all
3 of this in a bill that we send back to them
4 that shows the rational basis with findings of
5 fact, and if you read this opinion, you find
6 numerous places where they say they don't have
7 anything in the record. Well, we need to put
8 something in the record explaining a rational
9 basis for why we are doing what we are doing,
10 why we are complying and how we are complying
11 with the determinations and the final judgment
12 of this Court.

13 So I really believe that they have given
14 us the road map. I applaud them for the detail
15 that they have engaged in and the analysis
16 here, and I think it is incumbent upon us to
17 limit ourselves to what they have said, which
18 are these districts.

19 SENATOR GAETZ: Thank you, Senator
20 Simmons.

21 Senator Storms.

22 SENATOR STORMS: Thank you. Thank you,
23 Mr. Chair.

24 I am -- I want to reiterate some of my
25 conversation that we had at our last meeting,

1 because I think that it is dispositive in the
2 direction that I believe that we should be
3 going. And while I agree to some extent with
4 some of my colleagues' analysis, I disagree
5 that -- and perhaps I am just not understanding
6 it, but I disagree as to what we are doing here
7 today. Our job today is not just to consider
8 compactness, because I -- and I understood that
9 while we get to the first --

10 SENATOR GAETZ: I apologize. We are in a
11 committee room here that has its own acoustical
12 challenges, so I realize that the conversations
13 are important to have, but if you do have a
14 conversation you'd like to have with another
15 member, perhaps take it to one of the alcoves.
16 We had a couple of Senators who could not hear
17 Senator Storms. So, Senator Storms, you are
18 recognized.

19 SENATOR STORMS: I don't think anybody has
20 ever said that to me before, Mr. Chair, they
21 couldn't hear me.

22 SENATOR GAETZ: It is --

23 SENATOR STORMS: Do you need me to talk
24 louder or more?

25 SENATOR GAETZ: Mark this day down. Mark

1 this day down.

2 SENATOR STORMS: I will put it in my
3 diary. Thank you, Mr. Chair. Okay. Senator
4 Latvala says it is not more, it is just louder,
5 so then I will be louder, okay.

6 Here is -- here is what the issue is: It
7 isn't just compactness, although I understand
8 that when you get into the Panhandle, when we
9 begin there, the issue -- since there are no
10 minority seats, the issue is an issue of
11 compactness, but I think that we would do well
12 to start first with the Tier 1 analysis.

13 The Tier 1 analysis, if -- you know, if
14 people have difficulty in understanding a tier,
15 the way I look at it is the first hurdle or the
16 first threshold. So the Court was very clear,
17 and I would turn folks' attention to page 187,
18 beginning in 187 and 188, the paragraph starts,
19 "In the second tier analysis," so I am going to
20 back into the analysis this way. Some members
21 have argued in dealing with the compactness.
22 Well, the compactness is the second tier
23 analysis. You cannot get to, and we cannot get
24 to a second tier analysis until we first -- in
25 the race that we are running, we first get over

1 the first hurdles. The first hurdles that we
2 have to leap over are the Tier -- those are the
3 Tier 1 analysis. We can't get down and run our
4 race at the end of the race. We have to start
5 here at the Tier 1 analysis. Tier 1 analysis
6 gets us first to the minority access seat, and
7 so -- to the question of the Voting Rights Act.
8 So we say is this a majority-minority seat, or
9 is this a minority access seat? And I think
10 this goes into the question as to what Senator
11 Simmons was saying, that we need to put this
12 analysis in the record. It is very important
13 that at every turn we are providing the Court
14 with the road map for how we followed their
15 check list.

16 In any constitutional analysis, anytime
17 any jurisdiction wants to follow a
18 constitutional analysis, it is a multi-step
19 process. It is almost like a check list. And
20 so in our first order of business, what we
21 ought to do is get over that first hurdle. We
22 look at each district and we say is this a
23 minority access seat, is this a
24 majority-minority seat. If yes to any of those
25 questions, then you must do the functional

1 analysis, that is the next step. The
2 functional analysis includes a variety of
3 factors. We should check them off if it is a
4 minority access seat or if it is a
5 majority-minority seat.

6 You look at voting age population.
7 According to the Court, this isn't according to
8 Senator Storms, this is according to the Court,
9 the second thing that you look at is you look
10 at their -- what the Court did, which is their
11 performance. The Court looked at their
12 performance in primaries, and the Court looked
13 at their performance in -- as a number of
14 turn-out, as a number of turn-out.

15 And then once you have come up with the
16 answers to that question, then you can go into
17 the compactness, but I turn your attention to
18 page 188, and the Court does an outstanding --
19 an outstanding job of just numbering the issue
20 of compactness. If you look over on 187, the
21 first paragraph beginning with the line, "The
22 second tier contained in 21-B," lists the three
23 requirements. From my taste and from my
24 understanding of the Supreme Court's decision,
25 the Court isn't -- these are in order of

1 importance, and I don't know if that is an
2 appropriate reading of it, but that is my
3 reading of it, that these are in order of
4 importance, the second tier. So after we have
5 dealt with the minority access, then we get to
6 the issue of compactness and we say districts
7 shall be nearly as equal in population as
8 practicable. So that is our first order of
9 business when we get to compactness. We don't
10 start with the way it looks. The Court called
11 that geographical compactness, I would just say
12 a visual compactness, because I think people
13 understand what that -- does it look compact,
14 but we are wanting to start with that, but that
15 is not the appropriate starting point for it.
16 We have to first deal with and put on the
17 record the issue that the Court outlined, which
18 is equal in population. What's the second
19 thing? Districts shall be compact. How did
20 the Court look at compactness? The Court
21 looked at compactness in all of the discussions
22 that you described. We should put that on the
23 record. We should use the same tools that the
24 Court used and put that on the record anytime
25 we are dealing with a compactness. And then

1 three, "Districts shall utilize existing
2 political and geographical boundaries where
3 feasible."

4 Now, if you take this information, the
5 reason why I think that this is the correct
6 reading of the Supreme Court's decision,
7 because if you go over to 188, the first
8 paragraph there, it is not a complete
9 paragraph, but it begins with the word
10 "ascertainable and commonly understood," the
11 key line in that paragraph is the sentence that
12 says, "Strict adherence to these standards must
13 yield if there is a conflict between compliance
14 with them and the one-tier standard." What
15 that means to me is that you need to get it as
16 compact as possible, every minority seat should
17 be as compact as possible. But if you can't
18 get it compact, then what you need to do is
19 give way to the protection, the preferences to
20 Tier 1. And so because that is what the --
21 that is what the case -- that is what the Court
22 is saying applies to minority access seats and
23 majority-minority seats, it should also
24 apply -- that compactness analysis should also
25 apply to this.

1 So I have a couple questions.

2 SENATOR GAETZ: That was a long build-up.

3 You are recognized for your questions.

4 SENATOR STORMS: Thank you. Thank you,
5 Mr. Chair.

6 I do think that it is important, because I
7 am hearing some members say we just need to get
8 to the point of compactness, but we cannot get
9 to the point of compactness, and it is very
10 important that we -- that we deal with that.

11 We -- so on that district right there that
12 you have, go through the compactness analysis
13 as outlined by the Court. Why did you put --
14 why does it -- why does it -- instead of going
15 east to west, that green that is written right
16 above Okaloosa, it is the "oosa" part. So why
17 is that a square there instead of a strip that
18 runs parallel? That is perpendicular to the
19 district. Why is that parallel? Why is that
20 perpendicular and not parallel?

21 SENATOR GAETZ: Mr. Guthrie.

22 SENATOR STORMS: What is the rationale?

23 MR. GUTHRIE: Okay. So let's look -- you
24 asked for the compactness scores for these two
25 particular districts, I believe that was your

1 request? So let me provide those. For -- and
2 by the way, all of these numbers are in your
3 meeting packet. If you look at the statistical
4 work-up for SJR 2-B, plan number S9016, on
5 pages six and seven, you will see the geometric
6 compactness scores that I referred to earlier.
7 So we have the area of the district, the
8 perimeter of the district, the end-to-end
9 distance or what we call here the cord of the
10 district, the convex hull of the district, the
11 Reock ratio for the district and the
12 Polsby-Popper score for each of the districts,
13 and then we calculate that as a mean for all of
14 the districts and we report the standard
15 deviation, the minimum and the maximum. So all
16 of that data is in your meeting packet. I
17 believe that gets it into our official record
18 today. But you asked about districts in
19 particular, so let's look at those -- those
20 districts.

21 For District 1 -- and somebody get my --
22 SENATOR STORMS: Well, Mr. Chair, really
23 the question I am asking of Mr. Guthrie before
24 he does that is why -- why aren't we starting
25 today with the Tier 1 analysis? Why aren't we

1 starting today with the minority seats first --

2 SENATOR GAETZ: Senator Storms, if you
3 would permit us, it is because the Supreme
4 Court didn't find any Tier 1 problems in
5 Districts 1 and 3. So in order -- you know, we
6 only have from 9:00 till 6:00 today. We
7 thought we would start with those things that
8 the Supreme Court did point out about Districts
9 1 and 3, but we certainly can go back and talk
10 about the number of African-Americans and
11 Hispanics who live in Districts 1 and 3 and do
12 that kind of analysis for you, or you can refer
13 to the meeting packet where the information is
14 already printed, but, Mr. Guthrie, please go
15 ahead.

16 SENATOR STORMS: Mr. Chair, that wasn't my
17 question.

18 SENATOR GAETZ: Well, okay, why don't you
19 try one more time, and I apologize if I didn't
20 understand the question.

21 SENATOR STORMS: My question isn't as to
22 -- as to -- as it relates to the minority
23 access seat, as to whether or not Districts 1
24 and 3 are minority access seats. My question
25 is, why aren't we starting with the minority

1 access seats? Since those are the Tier 1
2 issues that we have to deal with first, since
3 the courts clearly says we deal with Tier 1
4 analysis first, we should start with the
5 minority access seats, because everything else
6 falls from there. That is the first domino
7 that knocks over every other domino is what the
8 minority access seats -- what we are doing with
9 that. Why start -- why start at 1 and 3? Why
10 not start with -- pick a minority access seat,
11 I don't care which one, but start there and
12 let's start answering those questions first.

13 SENATOR GAETZ: Well, let's take a sense
14 of the Committee. Shall we start in northwest
15 Florida and work our way through the issues, or
16 would you like to start in someplace else in
17 the state with an area where there is a Tier 1
18 issue? Let me just do a -- let me do a show of
19 hands, and I apologize if this is too informal.
20 Those who believe that we should proceed on the
21 course that we are on now, please raise your
22 hand. Those who believe that you would like to
23 go into some other place in the state and
24 start, raise your hand.

25 A VOICE: Mr. Chairman? Mr. Chairman?

1 SENATOR GAETZ: Yes, Leader.

2 A VOICE: I think we are about to get
3 there, because I think if you stay on your
4 present course, the next stop is northeast
5 Jacksonville, which will be a minority access
6 seat, so I think we are getting to that point.
7 So if we could maybe finish quickly where we
8 are here, I think we go straight to where --
9 and Senator Storms is absolutely right, we
10 should look at the performance and we should
11 look at the functional analysis, but you are
12 going to have that in northeast Florida here in
13 about five minutes.

14 SENATOR GAETZ: Senator Storms, is that
15 satisfactory to you, or would you like us to do
16 a nose count?

17 SENATOR STORMS: Well, you know, I think
18 that --

19 SENATOR GAETZ: Whatever you'd prefer,
20 ma'am.

21 SENATOR STORMS: Well, I think it was my
22 question, why -- the question was the
23 rationale, why we started here.

24 SENATOR GAETZ: Well, no, I think your
25 question is properly addressed to the Chair,

1 why are we taking these issues in the order in
2 which we are, and would you like to have the
3 Committee vote on whether we should continue
4 with this or move to northeast Florida?

5 SENATOR SIPLIN: Mr. Chair?

6 SENATOR GAETZ: Senator Storms has the
7 floor, and she has the right to indicate her
8 preference.

9 SENATOR STORMS: Thank you, Mr. Chair. I
10 yield to Senator Siplin.

11 SENATOR GAETZ: Senator Siplin.

12 SENATOR SIPLIN: Thank you, Mr. Chair.

13 Throughout these meetings, I made it a
14 point that we follow the Supreme Court and the
15 federal law in making sure that we protect the
16 seven black Senate seats that we had, as well
17 as the Hispanic Senate seats, as well as the
18 House black seats and the House Hispanic seats.
19 And I think what Senator Storms is trying to do
20 is make sure that our final product does,
21 indeed, follow the law and make sure that we
22 have protected the federally-mandated Hispanic
23 seat and black seats. So we can do that
24 between the time now and before we vote. I
25 know she would appreciate that, and I would

1 appreciate that also.

2 SENATOR GAETZ: Well, because there's been
3 these concerns raised, you know, it's simply a
4 question of how you want the meeting to
5 proceed. I want to do what the Committee would
6 like, and so let me try again.

7 Those who would like to proceed to a
8 minority access district now instead of --
9 excuse me -- instead of finishing with where we
10 are, northwest Florida, please raise your hand,
11 those who would like to proceed to a minority
12 access district now. One, two, three, four.

13 A VOICE: I will raise my hand, five.

14 SENATOR GAETZ: Five. Those who would
15 like to finish with northwest Florida and then
16 go to northeast Florida, please raise your
17 hands.

18 We will proceed on the current basis, and
19 now Senator Storms has asked a question as to
20 the -- as to the criteria that are used and
21 whether or not they are compliant with the
22 Supreme Court's order, and, Mr. Guthrie, you
23 are recognized to answer that question.

24 A VOICE: What are we fighting --

25 MR. GUTHRIE: Thank you, Mr. Chairman.

1 So, yes, the order of precedence that Senator
2 Storms --

3 SENATOR GAETZ: You may want to check to
4 make sure your mike is on.

5 MR. GUTHRIE: The order of precedence,
6 Senator Storms, that you just suggested was
7 exactly the order of precedence that I and my
8 staff took as we analyzed the Court's opinion
9 and as we sought for a solution to recommend to
10 this -- to this Committee.

11 In terms of your particular question about
12 the compactness of Districts 1 and 3 -- and
13 let's don't bother with the perimeter and the
14 core, those data are all in your meeting
15 packet. As to the convex hull, the convex hull
16 score for District 1 is .80. The convex hull
17 score for District 3 is .79. The Reock ratio,
18 that is how circular is it, for the District 1
19 is .43, the Reock score for District 3 is .45.
20 And the Polsby-Popper score, or the perimeter
21 ratio, for District 1 is .33, and the perimeter
22 ratio for District 3 is .42.

23 SENATOR GAETZ: And, Mr. Guthrie, without
24 going back to the whole geometry lesson, what's
25 -- you know, just tell us, as to each of those

1 three categories, is a low score good, is a
2 high score good? Just give us a framework
3 there.

4 MR. GUTHRIE: With all of the geometric
5 compactness measures that we are looking at
6 here today -- well, those three ratios, a
7 higher score is more compact, more
8 geometrically compact. Higher score is better.
9 One is the highest score. Perfectly compact is
10 a one. Perfectly non-compact would be a zero.

11 SENATOR GAETZ: Okay. Now, Senator Storms
12 has raised some good points and she still has
13 the floor. Senator Storms for any further
14 questions.

15 SENATOR STORMS: Well, I do think -- I do
16 think -- I do think that it is important that
17 in every step -- every step of the way, we
18 should be following the same record. I mean,
19 we are not just talking -- we are not whistling
20 Dixie here. We are not talking to ourselves.
21 We are creating a record, and the record should
22 be very clear. We should do the same thing
23 every single time. We should -- we should use
24 the road map and follow the check list that the
25 Court used, and we should do it every single

1 time on every single district. You should put
2 in the record, here is why we did this, this is
3 why we think this is constitutionally
4 defensible. We are going to look at this
5 district, and now we get to the point that you
6 suggested, Mr. Chair. Now we get to the point
7 as you analyze District 1, is that a minority
8 access seat? No, the answer to the question is
9 no. Is it a majority-minority seat? The
10 answer to the question is no. Therefore, we --
11 we may now proceed to the compactness analysis,
12 and the compactness analysis is satisfied
13 because one, two, three, and now we move on to
14 District 3. Is it a minority --
15 majority-minority seat? No. Is it a minority
16 access seat? No. So now we can proceed to
17 compactness. Compactness is one, two, three.
18 And we should do that on every single time.
19 When we get to the minority access seats, when
20 you ask that question, is this a minority
21 access seat or a majority-minority, then you
22 say is this a minority access seat? Yes. Here
23 is the functionality that we used. This is the
24 equation that we used for it. This is why --
25 this is what worked. We took into

1 consideration the voting age population, we
2 took into consideration the turn-out, we took
3 into consideration this. We have to be
4 completely -- right, I mean, we have to justify
5 everything that we do, but we have to be
6 completely diligent in utilizing every single
7 element of this constitutional analysis. It is
8 a check list. You check it off. In order to
9 check it off, you have to articulate it into
10 the record, in my opinion. And so that is what
11 I am looking for for you to do on every one of
12 these. But if you don't want to do it and the
13 Committee doesn't want to do it, I think that
14 that is -- I think that we run a risk of being
15 afoul of constitutional analysis.
16 Constitutional analysis always has a threshold
17 that you have to get through, and then there
18 are elements, and you must check them off, and
19 the government must provide the backup to the
20 elements.

21 SENATOR GAETZ: Senator Storms, well put.
22 That is exactly what the plan has been and is
23 for today, and I think that is the course we
24 are on.

25 Any other general comments about

1 procedure? We have now managed to eat up
2 almost two hours. Yes.

3 SENATOR DIAZ DE LA PORTILLA: Mr. Chair,
4 thank you, and I would agree with that. I
5 think that as you go -- and I agree with the
6 methodology that you, Mr. Chairman, have
7 started with northwest Florida, go -- 1 and 3,
8 and then move to northeast Florida and so on,
9 but I think that kind of check list approach
10 that Senator Storms suggested is a good way to
11 go about it, do the Tier 1 analysis on each
12 district just to build the record, and then go
13 to the Tier 2 analysis. And then talking about
14 Tier 2, the compactness issue, the Court spent
15 a lot of time defining compactness for us. We
16 argued and talked about several definitions,
17 the functional definition and the geographic --
18 or geometrical, rather, definition of
19 compactness when we first met way back when,
20 but the Court basically told us how we should
21 look at the compactness issue. I think it
22 would be useful to get those scores and the
23 context each and every time, just because it
24 does take a little bit of time to let them sink
25 in. I think based on what you have just said

1 in terms of the Reock scores and the perimeter
2 score and the convex hull score and all that,
3 these two districts that we're looking at now
4 appear to be very compact. We need to have
5 numbers for the others as we move along to take
6 a look at that.

7 SENATOR GAETZ: And Senator Diaz de la
8 Portilla, that is exactly the plan. Good
9 point.

10 SENATOR DIAZ DE LA PORTILLA: One brief --
11 you know, just to put in context. While I
12 agree with about 99 percent of what Senator
13 Storms said, I do think that in looking at the
14 second tier analysis, the only category or
15 criterion that isn't qualified is the
16 compactness criterion, because it does say
17 "districts shall be compact." It doesn't say
18 "where practicable" as they do when they talk
19 about population, and it doesn't say "where
20 feasible" as the geographic and political
21 boundaries were qualified. So the direction I
22 got from reading the Supreme Court opinion is
23 that of those Tier 2 criteria, the only one
24 that isn't qualified is compactness, so
25 there -- and because they spent a lot of time

1 on that, I think it is important that we have
2 the numbers to show just how compact each
3 district is, and that's it, that is the final
4 thing I wanted to put there on --

5 SENATOR GAETZ: Sure. Thank you very
6 much, and Senator Storms, I thought your
7 comments were right on point, and you -- you --
8 I think you accurately predicted how Mr.
9 Guthrie intends to move through the rest of the
10 day.

11 Any other comments or questions at this
12 point? Senator Gibson.

13 SENATOR GIBSON: Thank you so much, Mr.
14 Chair. I just need clarity on one of the
15 questions that I asked earlier, and that is
16 whether the circumference stuff was applied to
17 the districts as they exist or -- do you
18 understand what I am saying?

19 SENATOR GAETZ: Yes, ma'am.

20 SENATOR GIBSON: How did we get to where
21 we are?

22 SENATOR GAETZ: In other words, if I may,
23 have you done a comparative analysis between
24 the -- as we are talking about compactness
25 scores, have you done a comparative analysis

1 between the districts as they are proposed in
2 the PCB and any other comparable, any other
3 plan, any other --

4 SENATOR GIBSON: Mr. Chair, I think my
5 question goes --

6 SENATOR GAETZ: I'm sorry.

7 SENATOR GIBSON: I'm sorry. Currently we
8 represent districts that are -- however they
9 are shaped. So did the analysis get applied to
10 the districts as they look now to come up with
11 the shapes is what I am trying to get to.

12 SENATOR GAETZ: I think the answer to that
13 is no. I think -- yeah, I think that the -- my
14 understanding, and Mr. Guthrie can correct me
15 if I am wrong, the compactness scores, if that
16 is what we are talking about, are as to the
17 plan as it would go forward to the Supreme
18 Court. I think the Court has indicated that
19 they are not terribly impressed with the 2002
20 baseline, and that we should not make a
21 reference to it as a justification. But we
22 certainly can provide you, if you would like,
23 with the compactness scores for the districts
24 that -- that we have now that will soon be
25 replaced by other districts.

1 MR. GUTHRIE: In fact, the scores for the
2 benchmark districts --

3 SENATOR GAETZ: Are in your packet, I
4 think.

5 MR. GUTHRIE: -- and for the plan that
6 passed the Legislature during regular session,
7 SJR 1176, and for this proposed alternative and
8 for the amendment that Senator Diaz de la
9 Portilla will offer and for the amendment that
10 Senator Latvala will offer are all in your
11 meeting packet.

12 SENATOR GAETZ: And when we get to that
13 point, we will lift those up so that you don't
14 have to tweezer them out yourself.

15 Senator Gibson, of course.

16 SENATOR GIBSON: Thank you, Mr. Chair.

17 So in terms of going back to -- and we are
18 going to get to it, I am sure, shortly. In
19 terms of you mentioning that the Court was not
20 impressed with the 2002 maps, but in terms of
21 minority opportunity districts or minority
22 access districts or minority-majority
23 districts, do we not have to use 2002 in order
24 to make sure that we do the protection or to
25 non-diminish, if you will, those particular

1 districts?

2 SENATOR GAETZ: So we thought, but we will
3 certainly take your question, and then so that
4 we can maintain some order to our conversation,
5 let's -- let's finish up with the districts
6 that are in front of us and then move to
7 districts where that question is germane. But
8 Mr. Guthrie and Mr. Bardos and Ms. Tunnickliff,
9 we will ask you to comment on Senator Gibson's
10 question.

11 MR. GUTHRIE: I agree, Senator Gibson,
12 that -- that the benchmark districts are very
13 relevant for determining retrogression under
14 Section 5 of the Voting Rights Act and for
15 determining the diminishment standard in Tier 1
16 of the Florida Constitution.

17 SENATOR GAETZ: Mr. Bardos or
18 Ms. Tunnickliff, any elaboration on that point?
19 And my point, Senator Gibson, was that my
20 layman's reading was that the Court was not
21 impressed with any attempt to use the 2002
22 districts as justification for not making
23 changes as we are talking about compactness.

24 Any other comments or questions at this
25 point? If not, let's -- are we at a stopping

1 point for Districts 1 and 3?

2 MR. GUTHRIE: You guys are going to be
3 interested to see what the next slide is.

4 SENATOR GAETZ: Well, before we go to
5 that, last -- last -- last call. We will go
6 back, if you want to, to anything, but while we
7 have these districts up -- Senator Negron.

8 SENATOR NEGRON: Thank you, Mr. Chairman.

9 I just wanted to agree with what Senator
10 Simmons said earlier with regard to the scope
11 of what we are here to do. If you look at the
12 Court's opinion, it is a 234-page opinion
13 written by Justice Pariente with some dissents
14 and other things, but it is very clear that 32
15 of the 40 districts have been found that
16 there's nothing wrong with them. And the idea
17 that we need to somehow revisit them I think
18 goes against what the Court said. They
19 specifically said, if you look at page 189,
20 that we should remedy the problems with regard
21 to those districts, to redraw them, and any
22 affected districts in accordance with the
23 standards defined by the Court, and conduct an
24 appropriate functional analysis to make sure
25 that we are complying with minority voting

1 provisions, as well as the two tier standards
2 of equal population, compactness and
3 utilization of existing, political and
4 geographic boundaries.

5 So, you know, these other questions might
6 be interesting, but I think how you are doing
7 it is exactly the way we should be doing it,
8 which is to start with the districts where they
9 found a problem, which were 1 and 3, and then
10 work our way through, showing that what staff
11 has recommended either does or does not make
12 the appropriate corrections, but I think that
13 Senator Simmons was exactly right that the
14 Court is not going to then, you know, go back
15 and do, you know, a fancy legal word, de novo,
16 but a whole new hearing on these other
17 districts, they've already looked at all the
18 districts in a thorough manner, and they even
19 gave us a suggestion as to Lakeland, which
20 wasn't mandatory, which I understand we fixed,
21 and then lastly with regard to the number --
22 the numbering of districts for two and
23 four-year seats. That is the scope of what we
24 are here to do today.

25 So I think that we are -- that we are on

1 the right track in moving forward, and some of
2 these other issues that don't relate
3 specifically to these eight districts are areas
4 that we shouldn't venture into.

5 SENATOR BRAYNON: Mr. Chair?

6 SENATOR GAETZ: Senator Negrón, as to --
7 as to the remedy that is proposed in the
8 proposed committee substitute for the problems
9 identified by the Court in Districts 1 and 3,
10 any other comments, questions, criticisms or
11 suggestions?

12 SENATOR BRAYNON: Mr. Chair, you said just
13 Districts 1 and 3 right now?

14 SENATOR GAETZ: We are, yes, sir, Senator
15 Braynon.

16 SENATOR BRAYNON: Because I -- Senator
17 Negrón spoke to the entire and our process, and
18 I just -- I felt the need to kind of expand on
19 what he just said there.

20 SENATOR GAETZ: Let us expand, by all
21 means.

22 SENATOR BRAYNON: And only because I think
23 that while I don't disagree with what Senator
24 Negrón and Senator Simmons were saying, I also
25 believe that we and this entire -- we -- when

1 we were doing our process, and also throughout
2 this opinion, they talk about the impact of the
3 minority seats on the map in general, and all
4 of the minority seats were not spoken about.
5 Even in one portion it even said we also
6 recommend that you also do a functional
7 analysis on this seat. And while we haven't
8 gotten to that discussion yet, it seems to me,
9 and I think Senator Storms was trying to get to
10 that, that when we do get to it and we see what
11 was the -- what was the functional analysis,
12 what was the specifics of what we did and how
13 did it affect the map that we see in front of
14 us, then I think we can have a conversation
15 that encompasses everything, and I think
16 without that, I -- I mean, I can say 1 and 3
17 are fine, but I don't know how they were
18 affected by the functional analysis that was
19 done on District 6, because I don't know what
20 -- exactly what the functional analysis was,
21 because we haven't discussed that -- discussed
22 exactly what that was yet. I felt like it was
23 maybe -- maybe that should have been spoken
24 about as a definitional thing, not specific to
25 that district or the minority districts, and I

1 just think that we could -- we could at least
2 lay that ground work as to what a functional
3 analysis is. So I don't -- I don't see a point
4 in asking for one for 1 and 3, if you get what
5 I am saying, Senator.

6 SENATOR GAETZ: Yes, sir. Any other
7 questions that might be germane specifically to
8 the Court's order as to 1 and 3 and our
9 proposed remedy? Anything else?

10 All right. Then we can certainly go back
11 to it if anybody has any questions, comments or
12 criticisms, but Mr. Guthrie, why don't you move
13 to the next issue, please.

14 MR. GUTHRIE: And before I do that, just
15 to make sure we are all understanding what we,
16 in fact, have done here, I and my staff have
17 been very, very busy over the past week, and
18 we, in fact, have performed functional analyses
19 on each and every one of these districts. So
20 we have done that for you. If you want that
21 laid out in the record, six o'clock today may
22 not be time enough, but we can -- we can do
23 that for any and all of the districts.

24 SENATOR GAETZ: Well, let us take the
25 questions as they come. And, again, the

1 information is in the packet, it will be
2 provided in our pleading to the Court, but if
3 anybody has any question about functional
4 analysis for Districts 1 and 3, now is not the
5 only time, but now would be a good time to
6 raise those questions.

7 Senator Diaz de la Portilla.

8 SENATOR DIAZ DE LA PORTILLA: Yes, Mr.
9 Chairman, I think we should have the functional
10 analysis for each and every seat, not just --
11 not just the eight that the Court found a
12 problem with, because there are 24 districts
13 that are affected, as the Court also said, and
14 given Mr. Bardos' answer to the question that
15 Senator Latvala asked and the one that I asked,
16 nothing can prevent the Court from taking a
17 look at any and all of these districts or any
18 one of these districts when we submit the new
19 bill back to them.

20 But at this time, just to keep the
21 discussion moving, Mr. Chair, I don't want to
22 delay it, I know we have limited time -- it
23 seems like we had a lot of time when we
24 started, now it doesn't seem like we have that
25 much time, but if you could just give us the

1 functional analysis in a nutshell for 1 and 3,
2 which is what we are on now, I think that would
3 be helpful to all of us. And, yes, all of the
4 stuff is in there, but it is kind of hiding in
5 plain view since there's so much stuff in
6 there.

7 SENATOR GAETZ: Well, why don't you do
8 that, Mr. Guthrie. Let's respond to those
9 questions very specifically, and then when you
10 do, please reference where in the meeting
11 packet members may find this information if
12 they wish to ask questions about it or refer to
13 it later.

14 MR. GUTHRIE: Okay. The information that
15 is in your meeting packet for Districts 1 and 3
16 regarding the concentrations of minority voters
17 is the voting age population in District 1.
18 The black voting age population is 15.3 -- or,
19 excuse me, 15.5 percent. In District 3, the
20 black voting age population is 11.5 percent.
21 The similar numbers for Hispanic: Voting age
22 population are 4.0 percent in District 1, and
23 4.7 percent in District 2.

24 A VOICE: Mr. Chairman, could we just have
25 the page numbers for those things so that we

1 can --

2 SENATOR GAETZ: Absolutely.

3 A VOICE: -- track and follow along?

4 SENATOR GAETZ: Could you provide where in
5 the meeting packet that information is found,
6 please?

7 MR. GUTHRIE: I am going to need my staff
8 to help follow along. The statistical workup
9 for SJR-2B, which is one of the items behind
10 the staff analysis, and it is referenced in the
11 index that Mr. Ferron prepared -- page 17, I am
12 informed, of the PDF that is on -- available
13 on-line. So page 17 shows you the voting age
14 populations that I just read out, as well as
15 those same populations for all the districts in
16 the state.

17 SENATOR GAETZ: Senator Diaz --

18 MR. GUTHRIE: I wonder, Mr. Chairman, if
19 it would be efficient to walk the members
20 through all of the data that are in the meeting
21 packet.

22 SENATOR GAETZ: Let's take a moment to do
23 that. That might save a little time and make
24 everybody able to use the information in front
25 of them more effectively.

1 So are there any other questions now --
2 this is not your only chance -- as to Districts
3 1 and 3? If not, we will ask Mr. Guthrie to
4 walk us through the meeting packet.

5 MR. GUTHRIE: So what I am going to do is
6 -- first I need the meeting packet. Jay, where
7 do I go to get the meeting packet? Is it on
8 one of our drives? On our --

9 A VOICE: Yes.

10 MR. GUTHRIE: Where?

11 A VOICE: There. That is it right there.

12 MR. GUTHRIE: Okay. Okay. So in the
13 meeting packet that is available on-line --

14 SENATOR GAETZ: And let's stop. Is
15 everybody -- is everybody with us here if you
16 want to be? Are you tracking with Mr. Guthrie
17 as to -- as to the on-line meeting packet?
18 Okay, Mr. Guthrie, go ahead.

19 MR. GUTHRIE: So we have the expanded
20 agenda, which you are familiar with from all of
21 your committee work. There's the analysis for
22 SJR-2B, that is a typical staff analysis. In
23 this case, what we are describing is the shell
24 bill, or the bill that was filed last Wednesday
25 before the committee substitute is applied. We

1 also have a more thorough staff analysis for
2 the proposed committee substitute explaining
3 the effect of proposed changes and
4 constitutional issues, again, as you are
5 accustomed to seeing.

6 What is different between the materials
7 provided in this meeting packet and what you
8 may be used to from some of your other
9 committees is that we have, as we did during
10 the regular session, lots of maps and
11 statistics that we make available for each of
12 the plans that are being considered by the
13 Committee. So the first page under the
14 analysis -- I'm now on page nine out of 514 --
15 is an index to the materials that are available
16 for plan 9016, which is the proposed committee
17 substitute for SJR-2B. We have seven maps. I
18 also produced for the Committee these larger
19 maps, which I think actually are a lot easier
20 for you to use, but there are seven maps.

21 Following that is the district statistics
22 for each of the maps. And by the way, we have
23 these -- all of these documents bookmarked. So
24 if you want to see the southwest map for this
25 district, you simply click on that bookmark and

1 you go directly there.

2 Let's look at the district statistics,
3 which was the next element in the -- in the
4 index there. The district statistics that we
5 show for every plan and for every district are
6 the deviation -- that is the difference between
7 the district population and the ideal
8 population or the target population for
9 districts -- we have that both as a number and
10 as a percentage, we have the total population
11 of the district, we have the total voting age
12 or age 18 and over population of the district,
13 we have the black voting age population, both
14 as a number and as a percentage -- and let me
15 make a note here that black voting age
16 population includes those persons who check on
17 the census that they are black, irrespective of
18 whether they checked that they are Hispanic,
19 okay. So Hispanic blacks and non-Hispanic
20 blacks are both included in this number. Also,
21 with the census form, you could indicate up to
22 six different choices as to what your race is.
23 If you chose black as any one of the six
24 choices, then you will be counted as one of the
25 persons in the black VAP category. And then

1 Hispanic VAP is simply the persons who checked
2 on the census form that they were Hispanic,
3 regardless of whether they said that they were
4 black. So there is a bit of -- a small bit of
5 double-counting of persons who are Hispanic
6 blacks between these two categories, but the
7 way that we counted them here is consistent
8 with the U.S. Department of Justice guidance on
9 how to count voting age population of racial
10 minorities. As a handy little visualization,
11 we have structured these columns so that the
12 larger percentages of African-American
13 population are highlighted in shades of red and
14 the larger populations of Hispanic population
15 are highlighted in blue. So that is the first
16 sheet, and we have that for each of the plans.

17 The next thing you come to is an analysis
18 for -- again, for each plan of how it stacks up
19 in terms of split subdivisions. So how many
20 counties are there in the state? There are 67
21 counties and 410 cities. Of those, how many
22 are only in one district? Well, with this
23 proposed committee substitute, there are 43
24 counties that are wholly in one district, there
25 are 364 cities that are only in one district.

1 And aggregate number of splits, we have covered
2 this before at a committee meeting, is if a
3 city gets split into three districts, we will
4 count that as, not two, but as three. So any
5 city that is split or any county that is split
6 is going to count as two splits for purposes of
7 this aggregate number of splits. If it is
8 split in three districts, it will count as
9 three; if it is split in four, it will count as
10 four. This is a general measure of the extent
11 to which political subdivisions are held intact
12 by your districts.

13 The next -- the next sheet that we have in
14 the report is called "Subdivisions, Borders and
15 Geometry." That gives you a count by district
16 of the numbers of -- let's look at -- the
17 numbers of cities and counties that are whole
18 or part -- wholly or partially included in each
19 of your districts. It has the analysis, what
20 we call our border analysis, and that is a
21 statistical method that I and my GIS staff came
22 up with to try to provide a quantitative
23 measure of the extent to which political and
24 geographic boundaries are followed by these
25 districts. The city borders is the percentage

1 of city boundaries that are -- that go into the
2 total boundary of the district. So in this
3 case, District 1, 12 percent of its overall
4 boundary is made up of city boundaries,
5 81 percent of its boundary is made up of county
6 boundaries, and ninety -- so you put those two
7 together, and if a city boundary and a county
8 boundary happen to be aligned with one another,
9 you don't count it twice. So you put those two
10 together, and the amount of that district that
11 is covered by what we call political borders is
12 92 percent. Primary and secondary borders,
13 that is a measure of how much of the boundary
14 of that district is a primary or secondary
15 road, a major road, a county road, a state road
16 or a U.S. highway. Water boundaries, that is
17 the percentage of the district that is
18 following a river or a -- not a stream, but all
19 we took was water bodies that were five acres
20 or more, and we looked at the percentage of the
21 district that -- the district boundary that is
22 covered by one of those borders of five acres
23 or more. And then finally, the political or
24 geographic boundaries for these two districts
25 we see is 99 percent.

1 We also have on this sheet the measures of
2 compactness that we talked about earlier for
3 each of the districts, and then at the top we
4 have the totals, the minimum, the maximum, the
5 mean and the standard deviation, so -- and
6 those are the area perimeter, end-to-end
7 distance and geometric ratios that we talked
8 about earlier. So that is the next sheet in
9 your meeting packet.

10 The next several pages of the packet show
11 you for each district what counties go into
12 that district, and if the county is split, we
13 give the percentage of the population and the
14 percentage of the area of that district that
15 are in that county.

16 So for District 1, which we have just
17 looked at, we see that all of Escambia's
18 297,619 people are in District 1, all of Santa
19 Rosa's people are in that district, and 25,083
20 people from Okaloosa County are in District 1.
21 We do that for each county and each district in
22 the state.

23 Next we have, starting on page seven for
24 this plan, a similar report for all of the
25 municipalities that are in each of the

1 districts. Again, if a municipality is
2 split -- you see if it is blank in the
3 population percent and area percent category or
4 column, that means the city is entirely
5 contained within the district. If you see a
6 percentage here, it means that the city is
7 split. So District 4 makes up part of the City
8 of Jacksonville; in fact, it makes up 43.4
9 percent of the population and 61.8 percent of
10 the area. So that is all of your city
11 population.

12 The next report that we have for each of
13 the plans tells you for each district and for
14 each county, the share of the district that is
15 in each of the counties, and the share of the
16 county that is in the district. And we do that
17 for total population, for voting age
18 population, for black -- and then for black
19 voting age population and Hispanic voting age
20 population. So this is what we call our county
21 shares report to give you an idea of which
22 counties are going to have the dominant voice
23 or, you know, how the counties stack up in
24 terms of the influence they would have in a
25 total district's population.

1 Next we come to the demographic profiles.
2 So for each of the districts and each of the
3 plan, we give you detailed statistics from the
4 census summary file one data showing you the
5 age, detailed race information, family
6 information, group quarters, counts. Group
7 quarters sometimes is interesting because it
8 shows you the population that is living in
9 correctional facilities, juvenile facilities,
10 nursing homes, things that this Committee has
11 talked about in the past. Well, all of that
12 data for each of the plans is compiled here in
13 your -- in your meeting packet. So we cycle
14 through the 40 districts.

15 Next we come to a report called -- what we
16 do is we compare the shares of the new
17 districts with the prior districts. So what
18 this report tells us is that the new District 1
19 is made up of a part of the old District 2 and
20 a part of the old District 4. Current District
21 2 and current District 4 go into District 1; in
22 fact, District 1 is made up -- 66 percent of
23 the population of the old District 2, and 33,
24 34 percent of the old District 4. So that
25 gives you an idea of what the -- some people

1 call it a CORS analysis, the extent to which
2 the new districts follow the population of the
3 old district.

4 We might wonder -- while we are here,
5 let's just go ahead and look at the new
6 District 10, because that is one of the ones we
7 are going to be focusing on later. What we see
8 here is that the new District 10 is made up
9 12.3 percent of the old District 9, which is
10 represented by Senator Gardiner. It is made up
11 also of parts of District 19, District 22. The
12 majority comes from the old District 24, which
13 is represented by Senator Altman. So more than
14 half of this new District 10 is going to come
15 from Senator Altman's territory, and then a
16 part of the District 26. So you can do that
17 CORS analysis using this next report that is
18 available for all of these plans.

19 The next thing that we give you is a
20 comparison, a similar shares report comparing
21 the PCS with the plan that passed the
22 Legislature during regular session. So this
23 shows you the extent to which the districts --
24 let's see, compare -- this is not showing me
25 what I expect to see. District 5 -- okay.

1 District 1, 2, 3, 4 and 5 are changed -- or and
2 4 are changed. District 5, Senator Montford's
3 district, is not changed by the PCS; therefore,
4 100 percent of the District 5 in the PCS is in
5 Senator Montford's district. So that shows you
6 how much change has occurred in terms of
7 population with the -- with the new plan. And
8 that is the report for the first plan.

9 Then we do -- we also do that not only for
10 the PCS, but here we are doing it for Senate
11 Plan 9008, which is the -- that is the Joint
12 Resolution 1174 that passed during the regular
13 session. So we have all of those same data for
14 the plan that passed during the regular
15 session. And then, Senator Gibson, this was
16 your question, we have the exact same data for
17 the benchmark or the current districts.

18 So all of the -- all of the ways of
19 slicing and dicing the population, all of the
20 ways of counting cities, counting counties, all
21 of the ways of measuring geographic
22 compactness, I and my staff, we dream about
23 these numbers at night. We have been kind and
24 have tried to spare dragging you into our
25 world, but I think as -- as the Committee has

1 indicated here, it is important for us all to
2 recognize what is in the record of this
3 proceeding, and I believe that this meeting
4 packet is an official record of this proceeding
5 that has been used by me and my staff as we
6 have been drawing these districts, all of this
7 information, plus more, and it will be used by
8 those who want to comment to the Supreme Court
9 about these districts and by the Court itself
10 in terms of evaluating the product of this
11 extraordinary session. So -- and that repeats,
12 then, when we get to Senator Latvala's
13 amendment or Senator Diaz de la Portilla's
14 amendment, we have a similar statistical workup
15 for both of those amendments, and that is -- we
16 are now at page 162. That is how this meeting
17 packet got to be so large.

18 SENATOR GAETZ: Questions?

19 SENATOR BRAYNON: Mr. Chair?

20 SENATOR GAETZ: Senator Braynon.

21 SENATOR BRAYNON: Yes. Thank you, that
22 was a lot of information, but one of my
23 questions was, and I thought we said that it
24 might be in here, was the functional analysis,
25 and where is that? Let me be specific, because

1 if you look on page 67 in the opinion, it
2 points out exactly what information is in a
3 functional analysis.

4 MR. GUTHRIE: Yes.

5 SENATOR BRAYNON: And I will say, one,
6 voting age population, which I have seen, voter
7 registration data, have not, voter registration
8 of actual voters and election results history,
9 so -- and this is -- I am taking this from the
10 opinion as to what is information that's in a
11 functional analysis. I would -- if that
12 information was there, I would say all right, I
13 will do that myself, but some of this
14 information isn't in the packet. So where --
15 if you did it, can I get a copy of it, maybe I
16 will go afterwards and see it? Or did we do
17 this type of functional analysis for the seats?

18 SENATOR GAETZ: The answer to the
19 question -- it is an excellent question. The
20 answer to the question is yes, that information
21 has been compiled, it is available and it is
22 part of the record, and Mr. Guthrie, could you
23 please help us understand where we might have
24 access to it?

25 MR. GUTHRIE: Yes, and I think the

1 Committee is aware of my sensitivity to using
2 political metrics as a way of engineering
3 political outcomes. I have tried my level best
4 from the moment that we started here to avoid
5 doing anything that would put us in a posture
6 where we could -- where people could assume
7 that we were using political data to engineer
8 political outcomes.

9 We have conducted the functional analysis
10 of the exact sort that the Supreme Court
11 referred to in its -- in its opinion. I did
12 not include those data in the meeting packet
13 that is before you now. It is all data that I
14 have. I can -- I can drag any of it up on the
15 computer. I've got it in my -- in my notebook
16 here for each and every district and each and
17 every plan, and when we get to Senator Gibson's
18 district here in a minute, we will trace
19 through exactly what the fields were that we
20 looked at, exactly how we performed that
21 analysis for each and every district.

22 If you would like to see the data -- let
23 me tell you how I did that. What -- as you
24 well know, the Senate made a choice long ago
25 not to put registration data or election

1 results data into the District Builder
2 application that the Senate is using. The
3 House made a choice that those data would be
4 helpful for purposes of conducting this very
5 kind of functional analysis. So what I did in
6 the days after receiving the Supreme Court's
7 opinion was go to the House website, I loaded
8 the plans, various of the plans, many of the
9 plans, I think about a dozen of them that were
10 still being considered as either a pass plan or
11 a remedial plan by this Committee, and I
12 downloaded from the House system the complete
13 census and election data report that My
14 District Builder provides. I have a
15 spreadsheet, which I will make available to you
16 if you would like it. The spreadsheet enables
17 you to just the paste that data into an Excel
18 spreadsheet, and what comes out is a report
19 that looks -- looks like what is in my notebook
20 here.

21 SENATOR DETERT: Senator Gaetz?

22 SENATOR GAETZ: Yes --

23 SENATOR DETERT: Detert.

24 SENATOR GAETZ: -- Senator Detert.

25 SENATOR DETERT: Thank you.

1 Just a question for the staff. It is kind
2 of -- to me, it is the elephant in the room. I
3 mean, I agreed with our initial way of doing
4 business, which is we were not going to take
5 party affiliation into consideration. I
6 thought that was the more noble way to go and
7 that is the way we went. The House, on the
8 other hand, took party registration into
9 consideration, and their maps got approved and
10 ours didn't, and the Supreme Court seems to say
11 that that is what we should have done. So now
12 we are to the point where the big question is,
13 why aren't we still not doing that?

14 SENATOR GAETZ: Well, Senator Detert, we
15 are, and as we get to each of the -- of the
16 districts, that functional analysis has been
17 done, but so that everyone has access to
18 everything and don't have to look for it on the
19 Web, or search for it, while the Committee is
20 in session today, Mr. Guthrie, may I ask that
21 you have one of the members of your
22 professional staff make Xerox copies of all of
23 the party registration and political
24 performance data that is on the Web and make it
25 available in copies for every member of this

1 Committee, and also make some extra copies for
2 members of the press and public who might be
3 here, please.

4 MR. GUTHRIE: Mr. Chairman, instead of
5 generating all that paper, would it be possible
6 maybe to append that to the meeting packet for
7 today and make it available on-line?

8 SENATOR GAETZ: Is that satisfactory, that
9 you would be able to -- or would you like it in
10 hard copy?

11 SENATOR DETERT: No, hard copy.

12 SENATOR GAETZ: Hard copy it shall be.
13 The trees shall fall -- just a moment. The
14 trees shall fall. So can you have that done,
15 please? And then as we go forward in the -- as
16 we look at each of the -- at each of the
17 districts, please reference that functional
18 analysis. Senator Braynon makes an excellent
19 point, and let's make sure that all that data
20 is in the record just as -- as our friends in
21 the House have done.

22 MR. GUTHRIE: I believe the way that I was
23 intending to proceed here today -- and we are
24 going to make all of those data available. I
25 have one question as to --

1 SENATOR GAETZ: Sure.

2 MR. GUTHRIE: -- as to the scope of that
3 data, but we will make all of that data
4 available. My question is -- or my statement
5 is I believe that the approach that the House
6 staff took was that they had professional staff
7 analysts looking at those data for the purpose
8 of conducting the functional analysis they
9 believed was necessary for these minority
10 districts.

11 SENATOR GAETZ: Absolutely.

12 MR. GUTHRIE: Now, when I drop the data --
13 and this is the scope question. When I drop
14 the data into my spreadsheet, what falls out is
15 data for all 40 Senate districts.

16 SENATOR GAETZ: Yes.

17 MR. GUTHRIE: Is that the data that you
18 want?

19 SENATOR GAETZ: Anything that you have, we
20 want.

21 MR. GUTHRIE: Okay.

22 SENATOR GAETZ: And I think Senator --
23 Senator Braynon, let's make sure that we are
24 responsive to your point. Is that responsive
25 to your point, sir?

1 SENATOR BRAYNON: Yes, yes, Mr. Chair,
2 that's pretty much responsive to the point.

3 SENATOR GAETZ: Well, let's be fully
4 responsive. Is there something else you would
5 like?

6 SENATOR BRAYNON: As we move forward, I
7 just -- my curiosity is how did we apply it to
8 the drawing of our maps, but I think you said
9 we are moving to the northeast quadrant where
10 we will talk about how it applies, so --

11 SENATOR GAETZ: Yes, absolutely, and if
12 you find that the explanation is either
13 insufficient or inadequate, I know you will
14 point it out, but let's make sure that all the
15 raw data, which is, by the way, all available
16 on the Web through the House, we will make hard
17 copies for everybody so that you can look at
18 it.

19 Senator Gibson, you are recognized.

20 SENATOR LYNN: Mr. Chairman --

21 SENATOR GIBSON: Thank you, Mr. Chair. I
22 apologize for being really anxious.

23 SENATOR GAETZ: No, no, no, no, no.

24 SENATOR GIBSON: These are anxious times.

25 We just printed out the meeting packet,

1 but the difficulty is -- and I am raising this
2 so that -- to save some of the trees in the
3 forest if we get the page numbers correct. You
4 referred to a page one hundred and something or
5 seventy something. When we printed this out,
6 it somehow starts the numbers over and over and
7 over, so there is no page seventy something in
8 here.

9 MR. GUTHRIE: I apologize for that.

10 SENATOR GIBSON: I am not saying it is
11 your fault. I am just trying to correct it
12 before we print it.

13 MR. GUTHRIE: I will try to -- I will try
14 to get my staff to number the meeting packet
15 sequentially the way we did with the materials
16 we submitted to the Supreme Court, you know, so
17 that the page numbers match. Yes, the -- I --
18 the spreadsheet numbers, districts, starting
19 over and over and over again, but that is a
20 different number than the number of the page in
21 your packet. Is that something that we maybe
22 could fix during the lunch break?

23 A VOICE: We can try.

24 MR. GUTHRIE: Okay.

25 SENATOR GAETZ: We will do more than try.

1 Anything else as to page numbering,
2 meeting packets --

3 SENATOR LYNN: Yes, Mr. Chairman.

4 SENATOR HAYS: I have a question, too.

5 SENATOR GAETZ: Just a second. Anything
6 else on this before we move on?

7 SENATOR LYNN: Yes.

8 SENATOR GAETZ: Senator Lynn.

9 SENATOR LYNN: I just would like to go
10 back. As we are going down the entire state,
11 each of these things -- we have talked about
12 the minorities, we have talked about the number
13 of minorities, we have talked about voting
14 records and so forth, now we are talking about
15 party affiliation. And if we could -- we have
16 talked about that for the Panhandle, but not
17 the party affiliation. If we could cover all
18 of those things as we cover each area, it
19 doesn't have to be in-depth, but at least the
20 percentages and so we know where we are for
21 each of the areas, because now we -- all we
22 have done with the Panhandle is we talked about
23 compactness and that there's practically no
24 minorities. That is fine, but then give us all
25 of those other factors that have just now been

1 brought up. It is fine to get thousands of
2 pages, but to try to find exactly what you are
3 looking for is pretty hard, and I think it
4 would hasten our discussion and help our
5 discussion if we could cover all of those
6 factors as we go to each section, and then if
7 people have questions based on that, it would
8 be different.

9 We've gotten the foundation now, so now I
10 think if Senator Gaetz is going to finish today
11 to where he intends to, and I don't mean
12 complete, but at least get to where he hopes to
13 get, we will never get there the way we are
14 getting, and I think all of us would like to
15 have just the succinct information. It meets
16 compactness because it's got this kind of party
17 representing, it's got this kind of minority
18 numbers, that would be so simple.

19 SENATOR GAETZ: And I believe that is what
20 is intended as we go forward, but --

21 SENATOR HAYS: Mr. Chairman, I --

22 SENATOR GAETZ: Just a second. Because we
23 are now beginning to understand our pacing and
24 our time and how much time is being taken for
25 these very important points, I have asked the

1 Rules Chair to indicate to us our ability to
2 extend this session to tomorrow so that we can
3 get everyone's questions in, everyone has an
4 opportunity to make all the comments they would
5 like to make.

6 Mr. Rules Chair, you are recognized.

7 SENATOR THRASHER: Thank you, Mr.
8 Chairman.

9 I agree with you, I think the pace that we
10 are going is deliberate at best, and given what
11 Senator Lynn just said, and others, it seems to
12 me that we need to probably schedule some time
13 for tomorrow. I have talked to the President.
14 He has authorized us to meet tomorrow from
15 eight o'clock in the morning, 8:00 a.m. to 2:00
16 p.m. Special order calendar group would still
17 meet at 2:45, and the amendment filing deadline
18 would be at 5:00 p.m. for the Senate joint
19 resolution. So that notice from the
20 President's office will be coming out shortly.

21 SENATOR GAETZ: Thank you very much,
22 Mr. Rules Chair.

23 Now, I believe that Senator Hays was next.

24 SENATOR HAYS: Thank you, Mr. Chairman.

25 I am -- I am not really confused, but I am

1 concerned. I thought our original plan when we
2 began these deliberations several months ago
3 was to follow Amendments 5 and 6 and not take
4 into mind incumbency or party affiliation or
5 anything like that.

6 I think Senator Simmons had an outstanding
7 point this morning when he said, "Follow the
8 points given by the Court." And now I get a
9 sense that we are fixing to open up the whole
10 gamut and we are going to start looking at
11 every district in the state based on their
12 population composition, based on their voting
13 performance, based on their party affiliation,
14 and I think we are headed down a slippery slope
15 of mass confusion. Am I correct in that
16 perception, am I the only one that feels that
17 way, or should we get back to following Senator
18 Simmons' admonition?

19 SENATOR GAETZ: Well, I think unless it is
20 the will of this Committee or the determination
21 of the Rules Chair that we have wandered off
22 the rules, we want to have a full and open
23 discussion, we want everyone to ask all the
24 questions that they want to ask. People may
25 have different points of view on this

1 Committee. Some people may think that the best
2 thing we should have done was to start with a
3 blank sheet of paper and start over. Others
4 may believe, with Senator Simmons, that the
5 Court was specific and that we ought to follow
6 the Court's order as it is -- was read to us by
7 Senator Simmons. We are going to provide as
8 open and fair a dialogue, an opportunity for
9 everyone to speak, as we can, but we are going
10 to get through this.

11 We do have a constitutional
12 responsibility. We cannot talk it to death.
13 We have to get to a point where we make
14 decisions. And so, therefore, what I will ask
15 Senators to do, most respectfully -- just a
16 moment, Senator Latvala -- what I will ask
17 Senators to do, most respectfully, is make your
18 points -- and every point that's been made has
19 been hopeful and valid and instructive, but let
20 us, if we can, try to actually get to the
21 districts so that we can explain the analysis
22 that has been undertaken, as opposed to talking
23 about what the analysis ought to include.
24 Let's see if we can satisfy your concerns with
25 the presentation that Mr. Guthrie is going to

1 make.

2 I think, Senator Hays, that you are right,
3 the Senate did take a position that we wanted
4 to be blind to some of the partisan data and
5 partisan considerations. The Supreme Court
6 took a different view. A request has been
7 made, which is entirely proper, by members of
8 this Committee to have access to all of that
9 data in hard copy. It is already available on
10 the Web. We will make that information
11 available. But I will be as permissive as I
12 possibly can, but we've now been given by the
13 President another day to meet, and we will go
14 through each of these issues as thoroughly as
15 any member wants to, but I will -- I would like
16 to ask members to try to stay on course.

17 We are moving now from northwest Florida
18 to northeast Florida, and so I would like to
19 see if we could contain our comments within the
20 context of what we are talking about, and then
21 there's always time to go back and make wider
22 discussions, have wider deliberations and for
23 people to make statements about their belief
24 that we ought to do things -- other things.

25 But that is the way I would like to proceed,

1 Senator Hays. But we do -- we do want to take
2 this seriously, this is once in a decade, none
3 of us will ever have to do this again, except
4 Mr. Guthrie, who's signed up for a life
5 indenture.

6 Senator Diaz de la Portilla.

7 SENATOR DIAZ DE LA PORTILLA: Thank you,
8 Mr. Chairman.

9 So to that end, Mr. Guthrie, staying in
10 northwest Florida, we are now going to have a
11 functional analysis of these two districts in
12 northwest Florida, functional analysis as
13 defined by the Supreme Court in its opinion in
14 page 67, which includes a look at voting age
15 population, voting registration data, voting
16 registration of actual voters and election
17 results history, correct? That is my
18 understanding of how we are going to proceed.

19 SENATOR GAETZ: We certainly shall. Why
20 don't we -- just a second. Why don't we --
21 Senator Diaz de la Portilla has asked that we
22 look at proposed Districts 1 and 3 and go
23 through each one of those data points, and we
24 will take as much time as Senator Diaz de la
25 Portilla or other members want to take in order

1 to make sure that we -- not only are we putting
2 all of this information in the record as we
3 prepare for our lawyers to put a brief before
4 the Court, but we will put all those words in
5 the air, because we want to have a full
6 discussion, make sure everybody understands and
7 everybody has an opportunity to converse.

8 SENATOR LATVALA: Mr. Chairman?

9 SENATOR GAETZ: Mr. Guthrie --

10 SENATOR LATVALA: Mr. Chairman?

11 SENATOR LYNN: I have a question, please.

12 SENATOR GAETZ: Senator Latvala had had
13 his hand up for a while.

14 SENATOR LATVALA: This is sort of a
15 combination logistical question and a reminder
16 for the Committee. Unless we have a whole
17 bunch of redistricting staff that is not
18 sitting here in front of us, we are going to
19 have a little logistical problem tomorrow
20 morning with anyone who might want to file
21 amendments, because they are all going to be
22 sitting in here instead of helping the members
23 prepare amendments that would be due at noon
24 tomorrow, or ten o'clock tomorrow as you have
25 stressed earlier. Who is going to be doing

1 that processing if they are all sitting in
2 here?

3 SENATOR GAETZ: Well --

4 SENATOR LATVALA: And maybe that is --
5 maybe we kind of need to use that as a reminder
6 that maybe we don't need to have, you know,
7 every single statistic in the record read in
8 verbally by Senator -- by Mr. Guthrie on this
9 today. I think we are making some points here
10 about, you know, the big picture, but we can't
11 lose sight of the logistical situation that
12 we've got, and we've got to have some staff to
13 help do amendments tomorrow. So, I mean, we
14 could just talk this to death, but that means
15 no amendments are going to get done.

16 SENATOR GAETZ: Senator Latvala makes an
17 excellent point. You are looking at the team.

18 SENATOR LATVALA: That is what I thought.

19 SENATOR GAETZ: And so, therefore, as they
20 say in sports, we control our own destiny. We
21 can spend as much time as you would like up
22 until when, Mr. Rules Chair, 2:00 tomorrow
23 afternoon, in this committee room, the
24 President and the Rules Chair have given us a
25 new amendment deadline, and that is five

1 o'clock tomorrow, but we can't be thinking up
2 amendments at 3:00 or 4:00, but the new
3 amendment deadline can be five o'clock if
4 necessary, if we are still talking tomorrow,
5 but we do control our own destiny. We want to
6 be as thorough as we can here and we want to be
7 as thorough as we can in preparing amendments
8 for the floor. So it is literally up to the
9 Committee as to how you proceed.

10 SENATOR DEAN: Mr. Chair?

11 SENATOR LYNN: Mr. Chairman?

12 SENATOR GAETZ: And Senator Hays. I'm
13 sorry, did you have your hand up? Senator
14 Dean, I'm sorry, and then we will make sure
15 everybody has a chance to talk. Senator Dean.

16 SENATOR DEAN: Mr. Chair, I would like to
17 suggest also that we have a great degree of
18 success in this court review of this process
19 that our staff has done, and rather than to
20 continually berate the issue over and over, I
21 would like to see that Mr. Guthrie and our
22 professional staff take those successes that we
23 did get accomplished and use those directly
24 also in the proceedings that -- as we start
25 doing the revisiting of the new districts that

1 were proposed, as Senator Simmons pointed out.

2 I, for one, feel very strongly in support
3 of what Mr. Guthrie and the professional staff
4 has done, and I would hope that we would
5 maintain that focus also and continue in that
6 as we move forward.

7 SENATOR GAETZ: Thank you, Senator Dean.

8 Senator Lynn, and then we will take other
9 comments.

10 SENATOR LYNN: I think I am echoing
11 Senator Dean's -- and I am trying to
12 understand. Senator DLP, did you indicate that
13 you just want to do the -- these -- focus on
14 those districts that we are in question that we
15 have had to change?

16 SENATOR GAETZ: Senator Diaz de la
17 Portilla, what is the scope of your request for
18 verbal enunciation of the data that is in the
19 record?

20 SENATOR DIAZ DE LA PORTILLA: Thank you,
21 Mr. Chairman.

22 I think that certainly for the eight
23 districts in question and the 24 districts
24 affected, we should have the functional
25 analysis as defined by the Supreme Court; of

1 course, reserving the right to ask for the
2 functional analysis to be explained and
3 elaborated upon as other districts may come up.
4 It isn't my intention to have staff
5 methodically do a functional analysis on every
6 single district automatically. Obviously, I am
7 mindful of the time constraints that we have.

8 SENATOR GAETZ: Well, Senator Diaz de la
9 Portilla, the staff has done a functional
10 analysis on every district. The question is,
11 what would you like to have verbally
12 articulated?

13 SENATOR DIAZ DE LA PORTILLA: Well, and
14 that is exactly what I was saying, Mr.
15 Chairman. I was saying that, again, as to the
16 eight districts that the Court found problems
17 with, we need to have the functional analysis
18 as far as the remedial measure. As far as the
19 24 districts that are affected as a result of
20 those remedial measures, we should have that
21 functional analysis elaborated upon and
22 presented by Mr. Guthrie here, and we each
23 reserve the right to ask for the functional
24 analysis to be elaborated upon verbally here in
25 this Committee today or tomorrow, as the case

1 may be, when those districts come up. But what
2 I am saying is, I am not asking Mr. Guthrie to
3 automatically elaborate on the functional
4 analysis for each and every district.

5 SENATOR GAETZ: Okay. We will do sort of
6 a buffet table, everyone can have their choice
7 as to the data that they would like, but you
8 have heard Senator Diaz de la Portilla's
9 specific request, and then we will elaborate
10 beyond that based on anyone's questions. May
11 we allow the data now to be presented, or do we
12 want to ask more questions about the data?

13 SENATOR ALTMAN: Mr. Chairman, I have a
14 comment.

15 SENATOR GAETZ: More questions.

16 SENATOR ALTMAN: I am behind you, I'm
17 sorry, I have been trying to get you.

18 SENATOR GAETZ: Senator Altman.

19 SENATOR ALTMAN: A while back ago we
20 talked about printed reports. I just for the
21 record don't want anymore paperwork, I am
22 perfectly fine with the digital data, and I
23 think anything that is printed -- maybe members
24 have different preferences, but I'd find it
25 much more easier to use in the digital form.

1 SENATOR GAETZ: All right, then, any
2 members who do not wish to have printed
3 reports, please let Jay, who is at the end of
4 the table, know that, and he won't print
5 reports for you.

6 Now, let's go back to Senator Diaz de la
7 Portilla's question. Let's take proposed
8 District 1, and can you walk us through the
9 functional analysis, please?

10 MR. GUTHRIE: And I don't think we are
11 quite understanding what the Court did with
12 functional analysis. In its focus on Districts
13 1 and 3, the Court itself did not do any
14 functional analysis. That was not a relevant
15 issue with those two districts.

16 SENATOR GAETZ: But it is relevant to
17 Senator Diaz de la Portilla, his question is
18 appropriate, so --

19 SENATOR DIAZ DE LA PORTILLA: Actually,
20 Mr. Chair --

21 SENATOR GAETZ: Yes.

22 SENATOR DIAZ DE LA PORTILLA: -- if I may,
23 let me modify that, because I could understand
24 why that may just keep us here indefinitely. I
25 think --

1 SENATOR GAETZ: Just till 2:00 tomorrow.

2 SENATOR DIAZ DE LA PORTILLA: Well, yes,
3 which isn't indefinitely, actually, it is a
4 very definite time frame, but since we have
5 that limited time frame --

6 SENATOR GAETZ: Sure.

7 SENATOR DIAZ DE LA PORTILLA: -- that very
8 definite time frame, I think we should at least
9 address the functional analysis and elaborate
10 upon it when you talk particularly about the
11 minority districts.

12 MR. GUTHRIE: Absolutely.

13 SENATOR DIAZ DE LA PORTILLA: I think that
14 is where it becomes much more relevant, and so
15 I don't want us to go too far afield with each
16 and every district, but I think that would be a
17 better way to proceed upon further review, as
18 they say in the NFL.

19 SENATOR GAETZ: As they say in the NFL.
20 Okay. Now -- ah, Senator Gibson.

21 SENATOR GIBSON: Thank you, Mr. Chair.

22 So let me be clear, or as clear as
23 possible until we get to the end. Is the
24 purpose of the functional analysis to -- is the
25 functional analysis supposed to be done in

1 every single district, or is the purpose of the
2 functional analysis relevant only to minority
3 representation, and minority being inclusive of
4 all minorities?

5 SENATOR GAETZ: Are you asking for us to
6 attempt to interpret what the Supreme Court is
7 looking for, or what members of this Committee
8 would like presented today?

9 SENATOR GIBSON: Thank you, Mr. Chair.

10 I am -- I am asking for the -- what is the
11 purpose of the functional analysis? Is it to
12 be applied to every district, whether it is the
13 Court or the Committee or whomever, or whether
14 the functional analysis is only applicable if
15 it is a minority district?

16 SENATOR GAETZ: Mr. Guthrie, would you
17 like to take a crack at that in terms of what
18 we believe is necessary to be responsive to the
19 Court? And let me just say, Senator Gibson,
20 that we will be responsive in this Committee to
21 the request of any Senator for any functional
22 analysis data, whether the Court thinks it is
23 important or not. If you think it is
24 important, it is important.

25 Mr. Guthrie.

1 MR. GUTHRIE: And I would like to refer to
2 special counsel, if I may.

3 SENATOR GAETZ: You may. Counsel.

4 MR. BARDOS: The relevance of the
5 functional analysis is to determine whether
6 minorities have the ability to elect the
7 candidate of their choice in that district. It
8 comes out of the requirement that we not
9 diminish the ability of minorities to elect
10 candidates of their choice, and it is patterned
11 after the analysis. It is relevant to the
12 non-retrogression standard under Section 5. So
13 that is where its legal -- that is where it has
14 legal relevance.

15 A functional analysis could, practically
16 speaking, be performed on any district, but it
17 would likely tell you that in Districts 1 and
18 3, it would not function for minorities. So
19 that is where its legal relevance really lies
20 in determining whether minorities have the
21 ability to elect a candidate of choice in a
22 particular district.

23 A VOICE: Mr. Chair?

24 SENATOR GAETZ: I'm sorry, I will get to
25 you in just a moment.

1 Senator Gibson, does that answer your
2 question, ma'am?

3 SENATOR GIBSON: Yes, Mr. Chair, and,
4 therefore, where -- if I may follow up?

5 SENATOR GAETZ: Of course, you may.

6 SENATOR GIBSON: Thank you.

7 Therefore, where there is no question in a
8 district as to whether or not it could come
9 close to being minority access,
10 majority-minority or minority opportunity,
11 there is no reason to do a functional analysis,
12 and we will only do the circumference, the --
13 whatever those other -- convex -- I can't even
14 remember their proper names, but those other
15 analyses?

16 SENATOR GAETZ: Well, it is our
17 intention -- and we will respond to any
18 question from any member of the Committee, but
19 we will get through this. It is our intention
20 as we go through each of the areas of the state
21 to point out those things that the Supreme
22 Court said were flawed, and then to be
23 responsive. If we -- if folks want to go into
24 other areas of data search, we will attempt to
25 be responsive.

1 Now, Senator Diaz de la Portilla has
2 kindly -- he has kind of shortened the scope
3 now of the data that he wants explained, if I
4 understood him correctly, so that we are now
5 down to the minority districts as to functional
6 analysis. But he reserves the right, as any
7 member of the Committee, to ask for this kind
8 of information about any district as we go
9 through the process. Is that satisfactory,
10 ma'am?

11 SENATOR GIBSON: That is --

12 SENATOR GAETZ: Did you have any
13 follow-up, or is that all right?

14 SENATOR GIBSON: I think the answer to my
15 question is yes, and that is I believe, because
16 I want to make sure that if we get to any area
17 of the state that potentially has minority --
18 any of the three categories, opportunity,
19 access or majority, that we are doing the
20 functional analysis where there is the
21 opportunity to do so. Otherwise, we are only
22 doing the other formulas, is that correct?

23 SENATOR GAETZ: Yes, we are doing -- we
24 are being responsive to each concern or
25 criticism or invalidity that the Supreme Court

1 has indicated in each of the districts in which
2 they have indicated one, plus there are members
3 who would like to talk more generally about the
4 state and about -- and we have, obviously, the
5 numbering system to respond to as well. But
6 the answer to your question is yes.

7 And now, President Margolis.

8 SENATOR MARGOLIS: I would like to --

9 SENATOR GAETZ: Madam President, I think
10 your --

11 SENATOR MARGOLIS: I would like to request
12 a functional analysis of all of Dade County,
13 all the seats in Dade County, because of the
14 six seats in the Florida Senate, five of them
15 are protected seats, and the Anglo community
16 has become a minority in Dade County, so I
17 would certainly like to have that information
18 available.

19 SENATOR GAETZ: And, Mr. Guthrie, please,
20 let's make sure that when we get to that place
21 in the state in our conversations, that that
22 data is fully available, that we bring it up
23 and discuss it in front of the Committee and
24 that we do it in a plain fashion so that we can
25 all understand it, okay?

1 MR. GUTHRIE: The data that we prepared
2 here followed the prescription that was laid
3 out by the Supreme Court in its opinion, and
4 that prescription is -- was not used for
5 purposes of determining whether a white
6 minority was -- was having its voting rights
7 diminished.

8 SENATOR GAETZ: But we do have the
9 specific data in each of the districts in
10 Miami-Dade to show here's what the ethnic
11 breakdown is and here's what the voting
12 performance is, correct?

13 MR. GUTHRIE: All of the data fields that
14 were necessary for conducting the sort of
15 analysis that the Supreme Court directed the
16 Senate to do will be a part of these
17 spreadsheets that I will make available to
18 all --

19 SENATOR GAETZ: Great.

20 MR. GUTHRIE: -- at our lunch break.

21 SENATOR GAETZ: And when we get to south
22 Florida, let's make sure that we fully discuss
23 what President Margolis has asked for.

24 Now, anything else before we move to a
25 part of the state where many of these questions

1 are actually germane? Senator Diaz de la
2 Portilla.

3 SENATOR DIAZ DE LA PORTILLA: When it
4 comes to Districts 1 and 3, the Court said that
5 there is no consideration necessary of -- when
6 it comes to protecting minority voting access,
7 and so a functional analysis will not be
8 necessary when it comes to Districts 1 and 3.
9 That is all I --

10 SENATOR GAETZ: Praise God. Let's now
11 move to the northeast part of the state. More
12 questions? Anything else? Senator Braynon.

13 SENATOR BRAYNON: Mr. Chair, I only ask
14 this -- I know that we go to the northeast and
15 we skip over a district that we left the same,
16 which was District 5, but the question that I
17 ask, and this is only as I read the opinion,
18 did we do -- and I think we covered this, but
19 did we do a functional analysis of District 5?
20 And I ask this because District 5 contains the
21 most African-American county in the state of
22 Florida, District 5 was represented in 2002
23 benchmark by an African-American, so, you know,
24 I mean, these are the type of things that I am
25 sure led to the creation of District 29, which

1 was an ac- -- in our new map. So the
2 functional analysis doesn't just say, you know,
3 oh, this doesn't need it, but it could give you
4 some insight that created a seat or something
5 of that nature.

6 SENATOR GAETZ: Thank you, Senator
7 Braynon. Could you respond, Mr. Guthrie, as
8 to --

9 MR. GUTHRIE: Yes, Mr. Chairman, as to
10 District 5, the sort of analysis that the Court
11 prescribed we do on District 5 is first to look
12 at the percentage of the Democratic primary
13 election voters who were black. That number
14 for the 2010 primary election was 33.1 percent.
15 33.1 percent of the people who actually voted
16 in the primary in 2010 were African-American.
17 The percentage of -- the Court also looks at
18 the Democratic 2010 general election voters who
19 are black, so among the -- all the voters,
20 Democratic voters who voted in the general
21 election in 2010, what percentage was black.
22 That number in District 5 is 36.8 percent.

23 The Court also looks at the political
24 preference of racial minorities; that is, do
25 black voters prefer Democratic candidates or

1 Republican candidates? In District 5, 93.9
2 percent of the black general election voters
3 were Democrats, okay.

4 And then -- it is really a two-fold or
5 three-fold analysis. The first question is,
6 what percentage of minority voters do you have,
7 and is it a sufficiently large percentage to
8 control the primary election, okay, and elect
9 or nominate the preferred candidate of choice
10 in the primary election. The next question is,
11 is there a political preference among the
12 minority voters between Democrats and
13 Republicans. And then the third question that
14 the Court looked at in the functional analyses
15 that it performed is how the candidates
16 preferred by the minority voters fared in that
17 district in the general election. So how
18 did -- in this case, how did Democratic voters
19 fare in the general election?

20 What we can say in conclusion with respect
21 to District 5 is that -- is that your
22 African-American voters constitute a third of
23 the primary voters, insufficient for
24 controlling the outcome of that -- that
25 election. They are going to need significant

1 crossover vote in order to have their candidate
2 of choice win the election.

3 Secondly, with respect to District 5, you
4 have an overwhelming preference for -- among
5 blacks for Democratic candidates, and in
6 District 5, in the three races that the Court
7 looked at in its analysis -- those were Alex
8 Sink for Governor in 2010, Barack Obama for
9 President in 2008 and Jim Davis for Governor in
10 2006 -- in each of those three races, the
11 Democratic candidate won in District 5. So
12 that is the functional analysis prescription
13 applied to that district.

14 And if I may, I -- Andy and I have not
15 rehearsed this. If I could ask Mr. Bardos
16 whether I got that close to right?

17 SENATOR GAETZ: Mr. Bardos?

18 MR. BARDOS: I think that is right. I
19 think it is also important to note that
20 District 5 is one of the districts that -- or
21 rather, the Court didn't find fault with, and
22 the Court did say that the Senate plan does not
23 facially dilute a minority group's voting
24 strength or cause retrogression under Florida
25 law. So I think that is the ultimate

1 conclusion of what Mr. Guthrie stated.

2 SENATOR GAETZ: Senator Braynon, was that
3 responsive, sir, or did you wish to pursue any
4 other questions?

5 SENATOR BRAYNON: No, that was responsive
6 to District 5.

7 SENATOR GAETZ: President Margolis.

8 SENATOR MARGOLIS: To the attorney, is
9 there any description of a minority group that
10 we can rely on?

11 SENATOR GAETZ: Mr. Bardos.

12 MR. BARDOS: Could you restate the
13 question, I'm sorry?

14 SENATOR GAETZ: The question is, is there
15 any description of a minority group, what is a
16 minority group, a description that we can rely
17 on, descriptions that are commonly -- that are
18 accepted in law?

19 MR. BARDOS: Well, the Court in its
20 opinion refers to districts that are
21 African-American districts and then Hispanic
22 districts, and my understanding is that
23 Hispanics are generally viewed collectively and
24 those are the two minority groups that have
25 sufficient numbers in Florida to be able to

1 elect the candidates of their choice.

2 SENATOR GAETZ: Madam President?

3 SENATOR MARGOLIS: I am referring to
4 counties, and in some counties, there are other
5 groups that are minorities.

6 SENATOR GAETZ: Mr. Bardos.

7 MR. BARDOS: There are other groups that
8 are minorities. Blacks and Hispanics, though,
9 are the only ones that are sufficiently
10 numerous to have the ability to elect
11 candidates of their choice, so I don't know if
12 that is fully responsive.

13 SENATOR GAETZ: Madam President?

14 SENATOR MARGOLIS: What would you consider
15 -- what would you consider the necessity to be
16 a minority, I mean, what percentage of the
17 population?

18 SENATOR GAETZ: Mr. Bardos.

19 MR. BARDOS: There is no specific
20 percentage. I think we would look at the
21 functional analysis which the -- which the
22 Court set forth, and so we'd look at the same
23 data points and draw our conclusions the same
24 way that the Court did.

25 SENATOR GAETZ: Other comments or

1 questions? Leader Rich, did you wish
2 recognition, ma'am?

3 Senator Montford.

4 SENATOR MONTFORD: Thank you, Mr. Chair.

5 While we are on definitions, what is the
6 definition of candidate of choice?

7 SENATOR GAETZ: I apologize, sir --

8 SENATOR MONTFORD: Candidate of choice.

9 SENATOR GAETZ: Candidate of choice?

10 SENATOR MONTFORD: Yes.

11 SENATOR GAETZ: Mr. Guthrie?

12 MR. GUTHRIE: I would say a general term
13 of art used by political scientists to do
14 ecological inference and ecological regression
15 in voting analyses. It refers to not a
16 candidate who necessarily is the same race as
17 the -- as the voter, but the candidate who is
18 favored by the -- consistently favored by
19 members of that minority community. And it
20 takes on particular relevance under the
21 Thornburg v. Gingles case that Mr. Bardos or
22 Ms. Tunnicliff can tell us about when the
23 minority's preference is frustrated by the
24 majority voting as a block against that
25 candidate.

1 SENATOR GAETZ: Senator Montford, is that
2 responsive?

3 SENATOR MONTFORD: Yes.

4 SENATOR GAETZ: Other comments or
5 questions? I want to ask the Committee for its
6 preference as to lunch. Mr. Leader, do we have
7 -- hang on. Is the Majority Leader here?

8 A VOICE: He stepped out to get some food.

9 SENATOR GAETZ: Okay. Wise leader, wise
10 leader. My understanding is that we have two
11 choices. There is food in the back that
12 members can partake on. If it is not there
13 now, it soon will be. I think that is what the
14 Majority Leader was working on. Or we can take
15 a lunch break if you have other business to
16 attend to. What is the preference of the
17 Committee?

18 SEVERAL VOICES: Lunch break.

19 SENATOR GAETZ: Lunch break, all right.
20 This Committee shall stand in recess until
21 12:30.

22 (Brief recess taken.)

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C E R T I F I C A T E

STATE OF FLORIDA)

COUNTY OF LEON)

I hereby certify that the foregoing transcript is of a tape-recording taken down by the undersigned, and the contents thereof were reduced to typewriting under my direction;

That the foregoing pages 2 through 152 represent a true, correct, and complete transcript of the tape- recording;

And I further certify that I am not of kin or counsel to the parties in the case; am not in the regular employ of counsel for any of said parties; nor am I in anywise interested in the result of said case.

Dated this 26th day of March, 2012.

CLARA C. ROTRUCK

Notary Public

State of Florida at Large

Commission Expires:

November 13, 2014

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SENATE REAPPORTIONMENT COMMITTEE HEARING

TUESDAY, MARCH 20, 2012

VOLUME II

PAGES 154-153

Transcribed by:

CLARA C. ROTRUCK

Court Reporter

1 T A P E D P R O C E E D I N G S

2

3 SENATOR GAETZ: We have the copies made of
4 the additional data that some members wanted to
5 have hard copies of, and so we will get back
6 together again, and I would like to ask the
7 administrative assistant to call the roll to
8 make sure we have a quorum. Please call the
9 roll.

10 THE CLERK: Senator Gaetz?

11 SENATOR GAETZ: Here.

12 THE CLERK: Senator Margolis?

13 SENATOR MARGOLIS: Here.

14 THE CLERK: Senator Altman?

15 SENATOR ALTMAN: Here.

16 THE CLERK: Senator Benacquisto?

17 SENATOR BENACQUISTO: Here.

18 THE CLERK: Senator Braynon?

19 SENATOR BRAYNON: Here.

20 THE CLERK: Senator Bullard?

21 Senator Dean?

22 SENATOR DEAN: Here.

23 THE CLERK: Senator Detert?

24 SENATOR DETERT: Here.

25 THE CLERK: Senator Diaz de la Portilla?

1 SENATOR DE LA PORTILLA: Here.
2 THE CLERK: Senator Evers?
3 SENATOR EVERS: Here.
4 THE CLERK: Senator Flores?
5 SENATOR FLORES: Here.
6 THE CLERK: Senator Garcia?
7 SENATOR GARCIA: Here.
8 THE CLERK: Senator Gardiner?
9 SENATOR GARDINER: Here.
10 THE CLERK: Senator Gibson?
11 SENATOR GIBSON: Here.
12 THE CLERK: Senator Hays?
13 SENATOR HAYS: Here.
14 THE CLERK: Senator Joyner?
15 SENATOR JOYNER: Here.
16 THE CLERK: Senator Latvala?
17 SENATOR LATVALA: Here.
18 THE CLERK: Senator Lynn?
19 SENATOR LYNN: Here.
20 THE CLERK: Senator Montford?
21 SENATOR MONTFORD: Here.
22 THE CLERK: Senator Negrón?
23 SENATOR NEGRÓN: Here.
24 THE CLERK: Senator Rich?
25 SENATOR RICH: Here.

1 THE CLERK: Senator Sachs?

2 SENATOR SACHS: Here.

3 THE CLERK: Senator Simmons?

4 SENATOR SIMMONS: Here.

5 THE CLERK: Senator Siplin?

6 SENATOR SIPLIN: Here.

7 THE CLERK: Senator Smith?

8 SENATOR SMITH: Here.

9 THE CLERK: Senator Sobel?

10 SENATOR SOBEL: Here.

11 THE CLERK: Senator Storms?

12 SENATOR STORMS: Here.

13 THE CLERK: Senator Thrasher?

14 SENATOR THRASHER: Here.

15 THE CLERK: Senator Wise?

16 SENATOR WISE: Here.

17 THE CLERK: Quorum present.

18 SENATOR GAETZ: All right. We are back in
19 session, and during the lunch break, I did have
20 the opportunity to receive some advice from the
21 Minority Leader and the Majority Leader. They
22 would like us to move along. Certainly both
23 leaders want to make sure every question gets
24 asked and answered, but they would like us to
25 try to stay a little tighter to the task. And

1 so, therefore, what we are going to do is try
2 to do some times that we allot to the
3 amendatory process. We have members who have
4 amendments who deserve to have their amendments
5 heard, and so we are going to devote time to
6 the amendatory process, take about 45 minutes,
7 if necessary, for each of the amendments.

8 So the way that we would like to budget
9 the time, unless there is objection, is now we
10 will ask Mr. Guthrie to just briefly describe
11 to us what it is that he's handed out in hard
12 copy, and then we will go to northeast Florida
13 and for the next hour and a half, the next hour
14 and a half until about 2:30, we will go through
15 the specific areas of the map where the Court
16 has declared districts invalid and we will
17 describe to you the remedies that are being
18 proposed and we will respond, as you have asked
19 us to, with specifics as to how those remedies
20 bear up against the various criteria that the
21 Court has laid out that we need to respond to,
22 including functional analysis where appropriate
23 as defined by Senator Diaz de la Portilla, as
24 he defined where he would like that handled,
25 and compactness analyses where those are

1 relevant, and we will take questions as we go,
2 but I would like to ask members to respect the
3 request of their leaders to see if we can stay
4 on topic and that we can keep the points that
5 we make to essential points, but not
6 necessarily elongated points.

7 Is there any objection to moving as our
8 two leaders have indicated that they would like
9 us to move?

10 Okay. That being the case, Mr. Guthrie,
11 what is it that is being handed out to us now,
12 sir?

13 MR. GUTHRIE: Prior to the break, Mr.
14 Chairman, the Committee requested that they be
15 provided hard copy reports of the data that I
16 and my staff used for purposes of conducting
17 the functional analyses that were prescribed by
18 the Supreme Court. So what we are supplying
19 for each of the plans, the proposed committee
20 substitute, the plan that passed during regular
21 session, SJR 1174, and for the benchmark plan,
22 the districts that were in place from 2002
23 until present, the fields that the Supreme
24 Court stated would be relevant for determining
25 the opportunities for black and Hispanic

1 minorities to participate in the political
2 process. So it is the data -- we do not limit
3 it to just the districts that we think might
4 perform. We, in fact, have the data for all 40
5 districts in all of the plans, so that the
6 reader of the report can use what discretion
7 you believe is appropriate in determining which
8 districts are candidates for doing the more
9 thorough functional analysis and which are not.

10 SENATOR GAETZ: And two questions, Mr.
11 Guthrie: First, when we get to the Latvala
12 amendment, which also proposes a statewide
13 plan, and when we get to the Diaz de la
14 Portilla amendment, which also proposes a
15 statewide plan, we have functional analyses
16 that we can hand out when we get to those
17 points on the agenda, is that correct?

18 MR. GUTHRIE: Those are being -- we wanted
19 to get the copies made as quickly as possible.
20 They are continuing working, and we should have
21 those copies well in time for taking up those
22 amendments.

23 SENATOR GAETZ: All right. And then the
24 final question, and that is, for those members
25 who like to work on-line, all of this

1 information is, of course, on-line, and could
2 you please give the -- give the on-line site so
3 that members who wish to follow on-line can
4 follow on-line, and those who wish to follow in
5 hard copy can do so?

6 MR. GUTHRIE: So let's go to the Florida
7 Senate website and then to the "Redistricting"
8 tab, and I am going to see this for the first
9 time. And what I see is that we have asked the
10 IT team to get the -- a new bullet under the
11 home page for the redistricting committee.
12 That new bullet should be operational within
13 the hour, I would think. It will be called
14 "Data for Functional Analyses," and what will
15 be in that bullet is the three reports that are
16 being handed out in hard copy now.

17 SENATOR GAETZ: Okay. And then,
18 finally -- Ben, I would love to have copies --
19 a hard copy, too. Thank you. And then do we
20 have copies for members of the press so that
21 they can see if they choose to follow in hard
22 copy as opposed to on-line? Any extra copies,
23 make sure that our ladies and gentlemen of the
24 press have that.

25 All right. Does everyone know what you

1 have in your hands? Do you know how to follow
2 -- you don't know what you have in your hands.
3 Okay. Let's go back and -- yes, Senator
4 Gibson.

5 SENATOR GIBSON: I know what I have in my
6 hand, but I am not sure how to correlate it to
7 what. Like 9016 is obviously SJR-2B.

8 SENATOR GAETZ: Well --

9 SENATOR GIBSON: What's 2002?

10 MR. GUTHRIE: 2002 is the current
11 districts, so those are the --

12 SENATOR GIBSON: All right. That's what I
13 thought.

14 SENATOR GAETZ: Let me ask --

15 MR. GUTHRIE: -- districts that took
16 effect in 2002.

17 SENATOR GAETZ: You had asked, Senator
18 Gibson, if we could also show the districts as
19 they are and then the districts as were passed
20 by the Legislature and then the districts in
21 the remedial plan that we are considering now.
22 That is what you have in your hand.

23 Senator Siplin, did you have a question,
24 sir?

25 SENATOR GIBSON: Specifically which one is

1 which?

2 SENATOR SIPLIN: Thank you, Mr. Chair.

3 I just want -- maybe staff can explain
4 what we have in our hands.

5 SENATOR GAETZ: Are you satisfied with the
6 explanation, or do you need more?

7 SENATOR SIPLIN: I didn't catch it, I
8 apologize. Can you go over it again? I didn't
9 catch it.

10 SENATOR GAETZ: Yes, we can certainly go
11 over it again. Mr. Guthrie, would you please
12 go over again what these three pieces of paper
13 are?

14 MR. GUTHRIE: Real briefly, we download
15 the extended data set from the My District
16 Builder website that is hosted by the Florida
17 House of Representatives, and we select out of
18 that data set the fields that are relevant for
19 conducting the kinds of functional analysis
20 that were prescribed by the Florida Supreme
21 Court for evaluating minority districts.

22 SENATOR GAETZ: Yes, Senator Siplin.

23 SENATOR SIPLIN: I just need to know, what
24 is the functional analysis S9008 and 2002 and
25 9016? That is what I need to know.

1 SENATOR GAETZ: Mr. Guthrie.

2 MR. GUTHRIE: Thank you, Mr. Chairman.

3 9016 is plan number 9016, which is the
4 proposed committee substitute, 9008 is the plan
5 that passed the Senate -- Senate Joint
6 Resolution 1174 during the regular session,
7 S2002 is your current Senate districts.

8 SENATOR GAETZ: Good question. Any other
9 questions? Yes, sir, Senator Montford.

10 SENATOR MONTFORD: Just a real simple
11 question, the current districts. Did you
12 superimpose the numbers on the Gaetz plan here;
13 in other words, is District 1 on 2002 the same
14 as District 1, or did you go -- is District 1
15 the old District 1?

16 SENATOR GAETZ: Mr. Guthrie?

17 MR. GUTHRIE: What the House of
18 Representatives does is use a statistical
19 procedure that is called aerial interpolation
20 in order to attribute precinct of variables or
21 precinct attributes to census blocks, and then
22 they recompile those census blocks into
23 districts. So what you are seeing here is not
24 the actual results per district, but rather,
25 where the people would be if these districts

1 had been in place, if the proposed committee
2 bill districts had been in place for elections
3 ten -- two, four or six years ago.

4 SENATOR MONTFORD: Mr. Chair, if I may?

5 SENATOR GAETZ: Senator Montford.

6 SENATOR MONTFORD: Let me ask it another
7 way. District -- is District 1 on 2002 --

8 MR. GUTHRIE: Yes.

9 SENATOR MONTFORD: -- the same as District
10 1 on 9016 and 9008?

11 MR. GUTHRIE: No, those are three
12 different sets of geography.

13 SENATOR GAETZ: Currently Senator Gibson
14 represents District 1. It is in the
15 Jacksonville area. So the answer to that
16 question is no.

17 MR. GUTHRIE: Yeah. So you would look at
18 the map for the current districts, and those
19 numbers go with the election results for 2002.

20 SENATOR MONTFORD: So you can't compare 1,
21 1, 1, you've got to compare 1 with 3 to 6?

22 MR. GUTHRIE: One to 6 or 5 to 3, yes.

23 SENATOR GAETZ: Okay. Are we together?

24 Any other questions about what we have in our
25 hands?

1 All right. I think a lot of this will
2 become clearer as we actually use the data and
3 work our way through the districts where there
4 are more complicated issues. And with that,
5 Mr. Guthrie, can you take us to northeast
6 Florida?

7 MR. GUTHRIE: And I would like to make the
8 Committee aware about one little technical
9 detail in these numbers. For the election
10 results, the numbers that I report in this
11 spreadsheet are slightly different than the
12 numbers that the Supreme Court reported in its
13 opinion.

14 The method that we used was -- say for the
15 Rick Scott/Alex Sink election for Governor, we
16 made it so that we only looked at the votes for
17 those two candidates. So the -- for Rick Scott
18 for Governor, the numerator would be the votes
19 for Rick Scott, the denominator would be the
20 votes for Rick Scott or Alex Sink. If there
21 were third candidates or -- third-party
22 candidates or write-in candidates in the race,
23 they fall out. And the reason for doing it
24 that way is then you know that if a candidate
25 gets 50 percent of the vote, that candidate

1 would have had a -- at least a plurality in the
2 district. So that is how these data were
3 calculated. So when we say Rick Scott, we mean
4 Rick Scott, his share of the vote for the two
5 candidates; John McCain, his share of the vote
6 for votes cast either for McCain or Obama.

7 SENATOR GAETZ: And to keep us moving, if
8 I have kind of a dumb question, a question that
9 I just am having trouble relating a couple of
10 numbers, just -- you know, you can certainly
11 ask that a member of the staff come up and
12 speak to you personally. If you think it is a
13 question that has broader applications and
14 other people ought to know the question and the
15 answer, please feel free to ask it.

16 Okay, northeast Florida, away we go.

17 MR. GUTHRIE: Thank you, Mr. Chairman.

18 What you see on the screen now is the
19 current configuration of Senate District --
20 actually, it is Senate District 1. I guess I
21 -- what I did is I renumbered the districts so
22 that the colors would align with the districts
23 in the plan 9008 or plan 9016, so this is
24 actually Senate District 1. It stretches from
25 Duval County through St. Johns and Flagler

1 County, extends into Putnam County, and the
2 southern terminus is in Volusia County, the
3 Daytona Beach area. That district today is
4 based on the twenty -- when that district was
5 created, it was 46.6 percent black VAP. That
6 was in the -- in 2002, after the 2000 census.
7 During the decade, it became slightly higher
8 percentage of African-Americans. It is 46.9
9 percent black VAP as of the 2010 census. In
10 the plan that the Legislature passed out during
11 the regular session -- and, actually, that is
12 what we are showing on the screen here now, not
13 the current district, but the district in the
14 plan that was in Senate Joint Resolution 1176,
15 the one that the Court has asked us to correct.
16 So this is the district that the Legislature
17 presented to the Supreme Court. The Supreme
18 Court concluded that District 6 sacrifices
19 compactness and utilizing boundaries when not
20 necessary to do so to avoid conflict with the
21 minority voting protection provision. So the
22 Court is telling us that the district is
23 unnecessarily non-compact and does not
24 sufficiently follow political and geographic
25 boundaries. The Court also concluded that a

1 district that is based solely in Duval County
2 would be much more compact and likely afford
3 black voters the ability to elect candidates of
4 their choice.

5 The Court went on to say that further,
6 "Although adjoining District 9 standing alone
7 is not invalid, the reason for its lack of
8 compactness and failure to utilize political
9 and geographic boundaries was its location
10 adjacent to District 6. As a result of
11 District 6 being made more compact, District 9
12 becomes more compact as well."

13 So, again, let's look at the district in
14 the plan that was submitted to the Supreme
15 Court, the one that you passed off the Senate
16 floor in -- was it -- in January, and that the
17 Legislature passed out on February 9th.

18 Flipping the screen, here is the proposed
19 remedy. So as was suggested by the Supreme
20 Court, this remedy will create a district
21 entirely in Duval County. That district will
22 be 43.0 percent voting age population, which is
23 actually a higher percentage than the level in
24 the League Of Women Voters' plan, which the
25 Court held up as an example of how a more

1 compact district could be drawn in this area.

2 We conducted the functional analysis for
3 this reconfigured District 6. What we
4 discovered was that 66.3 percent of the voters
5 in the Democratic primary are black, that 91.4
6 percent of blacks in this area who vote in the
7 general election vote as Democrats. We don't
8 know how they cast their ballot, but they are
9 registered as Democrats. We know that the 54.3
10 percent of the general election voters in this
11 district are going to be Democrats, and that
12 Alex Sink got 57 percent of the vote, Barack
13 Obama got 59.8 percent of the vote and Jim
14 Davis in 2006 got 48.6 percent of the vote.
15 Those are figures, again, that are comparable
16 to the ones that the Court looked at for the
17 League of Women Voters' plan, and so based on
18 that, we conclude that it is possible to create
19 an opportunity district for minorities in Duval
20 County as the Court directed without working
21 contrary to the other objectives of Amendment
22 5, which are to avoid compactness and to follow
23 political and geographic boundaries.

24 SENATOR GAETZ: And then going back to
25 Senator Storms' request that we do -- you know,

1 that we articulate the way that a check list
2 could be developed here, you have responded --
3 or you have shown how the district responds to
4 the majority-minority issue. Now tell us how
5 these districts respond. Let's start with
6 District 6 and District 4 to the three indices
7 of compactness, please. And, again, as Senator
8 Storms has suggested, let's use that as our --
9 as our verbal method of articulating how these
10 districts respond to the Court.

11 MR. GUTHRIE: Okay. So for District 6, in
12 the plan that was originally submitted,
13 obviously it was in five partial counties, the
14 Reock score -- or let's go in order of convex
15 hull, Reock and Polsby-Popper, those values for
16 the bill that passed earlier, the Senate Joint
17 Resolution 1174 were at .43 for the convex
18 hull --

19 SENATOR GAETZ: And which district are we
20 on now?

21 MR. GUTHRIE: We are on District 6 --

22 SENATOR GAETZ: Okay.

23 MR. GUTHRIE: -- in the original plan. So
24 .43. The Reock score, or how circular is it,
25 the score was .12, and the Polsby-Popper score

1 was 0.07. So it -- with the remedy applied,
2 those comparable numbers are, for the convex
3 hull, .64, an increase of .21; for the Reock
4 ratio, how circular is it, it goes from .12 to
5 .41; and for Polsby-Popper, it goes from .07 to
6 .20. So the -- by those traditional measures
7 of geometric compactness, this district is
8 significantly more compact than the district
9 that extended south to Daytona Beach.

10 SENATOR GAETZ: And Senator Diaz de la
11 Portilla and Senator Storms, since you helped
12 us with those, are we being responsive now?
13 Okay. Senator Storms.

14 SENATOR STORMS: Yes, sir, I have a
15 question.

16 SENATOR GAETZ: Of course, you are
17 recognized.

18 SENATOR STORMS: Thank you.

19 So in looking at the analysis, I want to
20 back up, because you do a couple of things.
21 The Court's objection was that the districts
22 were not as compact as they could be without
23 diminishing the minority ability to elect a
24 candidate of their choice, and so -- so we made
25 it more compact. I am looking at the numbers

1 from -- from the regular session plan to the
2 proposed committee bill, and I am just
3 wondering -- my first question is, did we --
4 how close are we to the diminishment line, and
5 can we extract more compact qualities without
6 crossing the diminishment line? Where is the
7 line?

8 SENATOR GAETZ: Mr. Guthrie?

9 SENATOR STORMS: That is the \$64,000
10 question.

11 SENATOR GAETZ: No, very good question.
12 It is -- that is the rubber meets the road
13 question.

14 MR. GUTHRIE: And I don't know that the
15 Supreme Court set a bright line for us. I
16 believe that all of these evaluations need to
17 be made on a case-by-case basis using the full
18 complement of available data.

19 So what the Court would have been able to
20 see is that in the district that the Senate
21 presented during the regular session, District
22 6, which extended to Daytona Beach, had a black
23 percentage of primary turnout of 67.3 percent,
24 which is about one percent higher than the
25 district as reconstituted in this proposed

1 committee substitute. And the Court determined
2 evidently in this case that -- that that level
3 of difference was not significant for --
4 significant enough to justify the extension of
5 this district to Daytona Beach.

6 SENATOR GAETZ: Senator Storms.

7 SENATOR STORMS: Thank you, because I
8 noticed that the -- thank you, Mr. Chair.

9 I noticed that the -- statistically, while
10 we achieved certainly more compactness here, we
11 -- the percentage points, at least in a general
12 election and in the primary election, was, you
13 know, relatively small in so far as its
14 statistical analysis for minority participation
15 occurred. And so I just -- I just want to be
16 sure that you are comfortable or counsel is
17 comfortable that we did what we could to
18 address -- let me be more specific than saying
19 did what we could -- that we achieved as much
20 compactness as possible that the Court was
21 targeting with as much play that we have in the
22 numbers to reduce those -- the statistical
23 participation numbers.

24 I guess the real question would be is,
25 which is the number, or was it an average, an

1 average of the general, the primary, et cetera?
2 Because if I am looking at -- for 6, if I am
3 looking at the proposed committee bill, the
4 general election, the Hispanic general
5 election, who are Democrats is -- Hispanic 2010
6 is 37.6. The black 2010 general election
7 voters who are Democrat is 91.4. That on the
8 regular session was only 92.2, respectively,
9 38.5, so you've got a little less than one
10 percent there, and 34.6. So how do you -- how
11 did you say -- was it an average that you took
12 to achieve to not jeopardize the diminishment
13 criteria?

14 SENATOR GAETZ: Mr. Guthrie.

15 MR. GUTHRIE: I believe what you do,
16 Senator, and I believe what the Supreme Court
17 has asked the Senate to do, is to look at all
18 of the -- the full complement of available data
19 and make an informed decision based on the
20 entirety of the data available as to whether
21 this diminishment is going to occur. The
22 position, you will recall, that the Senate
23 articulated during the regular session --

24 SENATOR STORMS: Mr. Chair?

25 SENATOR GAETZ: Yes, of course, ma'am.

1 SENATOR STORMS: I guess I just want to --
2 and I guess I would rather have -- I guess I
3 would rather have an attorney answer the
4 question, with all due respect, it is not
5 disrespectful at all, but I am really asking
6 the question, is this a mathematical equation,
7 or is this the balancing test, Counsel?

8 SENATOR GAETZ: Counselor?

9 SENATOR STORMS: Because I think it makes
10 a difference.

11 MR. BARDOS: It is not an equation. I
12 think it is just applying common sense, and as
13 Mr. Guthrie said, an informed judgment to the
14 numbers that are collected here. The Court
15 performed several functional analyses in its
16 opinion, two of them on Senate districts as
17 enacted in Senate Joint Resolution 1176, and
18 two of them on districts that were in the
19 League of Women Voters' plan. And so you can
20 see there exactly what the Court did, it
21 reviewed the data points that were highlighted
22 to you by Mr. Guthrie, and then it came to a
23 conclusion as to whether under these
24 circumstances it is likely that minorities will
25 be able to elect the candidates of their

1 choice.

2 So there is no single formula or equation
3 that gives an answer. It is a -- it is a
4 common sense informed judgment applied to the
5 data that are collected in the information that
6 has been provided here.

7 SENATOR GAETZ: I think balancing test.
8 And, Ms. Tunnickliff, I am not going to ask you
9 each time. If you would like to expand upon
10 any answer that Mr. Bardos gives, just speak
11 up, okay?

12 MS. TUNNICLIFF: Thank you.

13 SENATOR GAETZ: Senator Diaz de la
14 Portilla.

15 SENATOR DE LA PORTILLA: So just to
16 understand it, then -- thank you,
17 Mr. Chairman -- in summary, the district -- the
18 plan that we passed, which is here under
19 functional analysis 9008, was a lot more black
20 voting age population than what is being
21 proposed as a remedy, and in terms of
22 performance based on election history, voted a
23 lot more Democratic, if you will, than
24 Republican, than what we are proposing to do
25 and fix, but the difference isn't significant

1 enough where it would make an ultimate
2 difference in the outcome. We go from a
3 district, what we passed, 47 percent voting age
4 population black to 43 percent voting age
5 population black, but when you look at the
6 performance in terms of elections, you are
7 talking about a couple of points' difference.
8 So at the end of the day, you wouldn't diminish
9 the ability of African-Americans to select a
10 candidate of their choice by reducing these
11 numbers somewhat while you still make the
12 district significantly more compact.

13 SENATOR GAETZ: Would you believe?

14 SENATOR DE LA PORTILLA: Is that right?

15 MR. GUTHRIE: I believe that is exactly
16 the sort of analysis the Supreme Court is
17 looking to the Florida Senate to do.

18 SENATOR DE LA PORTILLA: Okay. Thank you.

19 SENATOR GAETZ: Thank you. Any other
20 questions? Yes, sir, Senator Gibson, yes,
21 ma'am. I saw somebody behind you, I thought it
22 was a sir.

23 SENATOR GIBSON: Thank you, Mr. Chair.

24 I want to try to go back to something
25 Senator Storms -- when she talked about average

1 and how the functional analysis operates, not
2 only in this district, but other minority
3 districts that the functional analysis is
4 performed and are potential minority districts.
5 As far as performance goes and the ultimate
6 number that comes out as the voting age
7 population and how they potentially vote, is
8 that a combination of the general and the
9 primary? Because obviously the primary doesn't
10 decide -- is not really the election. The
11 election is won in the general -- in this
12 particular case, in Duval County, which is only
13 one city, I might add. So is there -- how do
14 you get to the voting age population and then
15 make your numbers work for general and primary
16 to come up with a performance?

17 SENATOR GAETZ: Mr. Guthrie.

18 MR. GUTHRIE: All of these are the kinds
19 of evidence that we were talking about
20 previously, and I think Senator Diaz de la
21 Portilla did a good job of summarizing that.
22 So you look at the voting age population, you
23 look at the ability of the minority voters to
24 be successful in getting their candidates
25 elected in the primary election, you ascertain

1 whether the minority voters are mostly Democrat
2 or mostly Republican, and then you look at
3 whether Republicans or Democrats win in the
4 general election. That is -- it is sort of a
5 three-step analysis that the Supreme Court
6 recommends that we perform here.

7 SENATOR GAETZ: Other questions? Yes, of
8 course, ma'am.

9 SENATOR GIBSON: Thank you.

10 And then in terms of percentage points, I
11 was just doing a little addition. I think I
12 can do that pretty good, I don't know about the
13 geometry part, but if you add the black voting
14 age population and the Hispanic voting age
15 population in the '02 and the '08 numbers that
16 are at the top of the page, they are 53.0 and
17 53.6, respectively, but then when you get to
18 the 9016, it comes out to 49.4. And so is --
19 what -- again, where is the line between
20 diminution and not? And the second part of my
21 question goes to then how many people are
22 actually represented in a percentage point?

23 SENATOR GAETZ: Well, what we will do is
24 divide that question. The first question calls
25 for a legal conclusion, and I think we have

1 raised an answer to that question several times
2 here, but we will do it again, because it is a
3 very important point, and then if you could
4 respond to the second part, Mr. Bardos.

5 MR. BARDOS: There is no single, clear,
6 bright line rule or number, but I think what
7 might be a helpful analogy is the functional
8 analysis which the Court performed on the
9 districts proposed by the League of Women
10 Voters. And that district, like this one, was
11 wholly contained in Duval County, and its
12 numbers were very similar to the one that is
13 being proposed here. Some of the numbers were
14 slightly higher, some were slightly lower, but
15 it is quite comparable, and in the compactness
16 scores also, it is quite comparable. And so
17 that provides us with -- I think with a helpful
18 guide post in determining whether the district
19 that is being proposed here diminishes or does
20 not diminish, because the Court was quite
21 complimentary of the League of Women Voters'
22 district in this area and apparently viewed
23 that as a district which appropriately
24 reconciles the constitutional standards.

25 SENATOR GAETZ: And, Mr. Guthrie, could

1 you take the second part of the question?

2 MR. GUTHRIE: So the report that we
3 provided here and on-line does not show numbers
4 of voters; however, in the source data set that
5 I downloaded from My District Builder, which is
6 the -- the input for all of these calculations,
7 they have the count of the total number of
8 registered voters and the total number of
9 turnout and the total number of people voting,
10 say, in the presidential contest. So you can
11 get a -- by doing the math, you can determine
12 what a one percentage point is -- constitutes
13 in terms of numbers of people, or a tenth of a
14 point. You can't calculate it from the numbers
15 that are provided here, but you can from the
16 source data that come out of the on-line My
17 District Builder application.

18 SENATOR GAETZ: And could you please make
19 sure that we have that information; in other
20 words, how Senators who are interested in that
21 question can go to that data source easily?

22 Yes, of course, Senator Gibson.

23 SENATOR GIBSON: Thank you, Mr. Chair, and
24 I would certainly ask that that be placed into
25 the record for all of the minority districts

1 that end up short, if you will, on percentage,
2 because while these numbers are just numbers to
3 us and the Court, they do represent people in
4 every single district, and they represent
5 minorities, as a matter of fact. And so -- and
6 for the record, this is -- we just happen to be
7 on northeast Florida, but it is not about me,
8 and I don't think it is about any other person
9 sitting here. It is about the people that are
10 represented in these numbers, and I think that
11 is more important than any square, box or
12 anything else that we can draw. And so I am
13 asking that that reflection of how many people,
14 how many minorities are affected is actually
15 something that goes into the record. And then,
16 if I may --

17 SENATOR GAETZ: Senator Gibson, if I might
18 just say that in order to determine how many
19 voters one percent equals, that changes from
20 election to election, because the number of
21 people who may vote in an election changes from
22 election to election. So to do that kind of
23 fine-tuned statistical analysis, we would have
24 to go to all the elections you are interested
25 in and then figure out the number of people who

1 voted and then figure out what one percent of
2 that constitutes in terms of numbers of
3 persons. May we have your permission to have a
4 little time to do that for you, please?

5 SENATOR GIBSON: Thank you, Mr. Chair.
6 That is fine, and I am not sure if it takes
7 quite that, but whatever it takes --

8 SENATOR GAETZ: No, whatever you would
9 like, we will try to find it.

10 SENATOR GIBSON: Thank you. Oh, gosh, I
11 think I lost my other question. Oh, I know
12 what it was, if I may?

13 SENATOR GAETZ: Sure, of course.

14 SENATOR GIBSON: In terms of -- I think it
15 was Mr. -- not Mr. Guthrie, the gentleman
16 sitting next to you.

17 SENATOR GAETZ: Mr. Bardos, the lawyer.

18 SENATOR GIBSON: The attorney. When we
19 are talking about -- and this may be a Mr.
20 Guthrie question. When the Court talks about
21 the opportunity of minorities to elect a
22 candidate of their choosing, in this particular
23 instance, is the minority population inclusive
24 of both black and Hispanic since both of them
25 are minorities, or are the numbers arrived at

1 using solely the black population? Because
2 when you combine them, the percentages are a
3 lot different.

4 SENATOR GAETZ: Sure. Mr. Guthrie.

5 MR. GUTHRIE: In this particular case, the
6 analysis that the Court conducted was looking
7 at the black voters.

8 SENATOR GAETZ: Any other comments or
9 questions at this point? If not, why don't you
10 move on to the other districts that are
11 affected here.

12 MR. GUTHRIE: Okay.

13 SENATOR GAETZ: As you pointed out, there
14 were more districts affected than just the
15 eight, there were some 24. And while we are
16 there on northwest -- or northeast Florida, do
17 you have any other comments to make about
18 collateral effects, and then we will take any
19 questions about that.

20 MR. GUTHRIE: So the configuration --
21 District 4 both in the -- in the prior plan and
22 in the remedial plan wraps around District 3.
23 The difference -- the primary difference for
24 District 4 is that District 6 takes a lot more
25 of the territory out of Duval County. In

1 tracing the borders of District 6, my staff and
2 I made a sincere effort to try to follow
3 political and geographic boundaries where they
4 were available for us.

5 And the other thing we see here is that
6 District 9 in the original plan extended into
7 Duval County. In the remedy, it stops at the
8 St. Johns County line. So District -- in terms
9 of District 4, its Reock score actual -- let's
10 see, its convex hull score actually goes down
11 slightly from .73 to .69 between the two plans,
12 the convex hull goes down, the Reock goes down
13 from .50 to .48, and the Polsby-Popper score
14 remains the same at 0.14. So in terms of
15 compactness measures, there is a very, very
16 slight difference as to District 4. It is in
17 the same counties and it is -- District 4 in
18 both instances has all of Nassau County and a
19 part of Duval County.

20 With District 9, that in the original plan
21 included parts of Duval, St. Johns, Flagler and
22 Volusia County. In the remedial plan, as the
23 Court anticipated, if you put the minority
24 district entirely in Jacksonville, that --
25 District 6 plus District 4 equals the

1 population of exactly two Senate districts, or
2 about two Senate districts. So we were able to
3 use the county boundary to encircle those two
4 districts. Then District 9 to the south can
5 contain all of St. Johns County, all of Flagler
6 County, all of Putnam County and a portion of
7 Volusia County to balance out its population.

8 SENATOR SIPLIN: Mr. Chairman?

9 SENATOR GAETZ: Yes, of course, Senator
10 Siplin, then Senator Smith.

11 SENATOR SIPLIN: Yes, thank you, Mr.
12 Chair.

13 Do we know how many -- were there any
14 blacks that were omitted that Senator Hill and
15 Senator Gibson represented before the Supreme
16 Court set forth their criteria that are not
17 being represented right now?

18 SENATOR GAETZ: Mr. Guthrie?

19 MR. GUTHRIE: Well, there were
20 African-American voters, citizens, living in
21 St. Johns, Putnam, Flagler and Volusia
22 Counties, which would have been in Senator
23 Gibson's district with the earlier
24 configuration and would not be in her district
25 with this new configuration.

1 SENATOR SIPLIN: Follow-up?

2 SENATOR GAETZ: Of course, sir.

3 SENATOR SIPLIN: Is there any way, or have
4 we had an opportunity or occasion to determine
5 what's that percentage that would not be
6 included of blacks in the re-make of the
7 district?

8 SENATOR GAETZ: Can you draw the
9 comparison between the two, recognizing that
10 District 6 -- by my eye, District 6 in the new
11 plan actually is larger in Duval County than
12 the old District 6, or than the former district
13 was. So if you could remark to that, and then
14 also if you could draw any comparison between
15 the League of Women Voters' plan and the plan
16 that is pending before the Committee --

17 MR. GUTHRIE: Okay. So --

18 SENATOR GAETZ: -- as to the question
19 raised by Senator Siplin.

20 MR. GUTHRIE: All of those data -- I don't
21 have those in my notebook or in my head, but
22 those data are accessible in the -- in the
23 meeting packet. Where I have the compare 9016
24 with 9008, that report, which is in your
25 meeting packet -- and I won't turn to it right

1 now, but after the meeting, I can show you how
2 to get to that -- that will show you exactly
3 the numbers of people and the percentages that
4 are included in the old district and not in the
5 new district.

6 SENATOR GAETZ: And the League of Women
7 Voters' plan which was held up as an example
8 does basically the same thing, does it not --

9 MR. GUTHRIE: It --

10 SENATOR GAETZ: -- in the sense of making
11 the district --

12 MR. GUTHRIE: The neighborhoods that --
13 the boundary that this -- that District 6 in
14 the proposed committee substitute to Senate
15 Joint Resolution 2B follows is similar to, but
16 not identical to the boundary in the League of
17 Women Voters' --

18 SENATOR GAETZ: But just -- just -- I
19 guess my question is, the League of Women
20 Voters' plan also called for cutting off that
21 district and not having it trail down to
22 Volusia County.

23 MR. GUTHRIE: Absolutely, yes. The people
24 who would be left out of the district would be
25 exactly the same ones, yes.

1 SENATOR GAETZ: Okay. And Senator Smith,
2 Leader Smith.

3 SENATOR SMITH: Thank you, Mr. Chair, and
4 I just want to pick your brain a little bit,
5 Mr. Guthrie.

6 I see that Volusia County -- you come down
7 into Volusia County with this district,
8 District 9. Now, remember, we had extensive
9 testimony, as well as I think even a
10 proclamation from the County to try to keep
11 that county whole. It would seem that if you
12 would have taken some of Clay County and put
13 into that district and keep Volusia County
14 whole, you would have had more of a compact
15 district for Senate District 9. What was the
16 reasoning for going down into Volusia County as
17 opposed to taking part of Clay County in that
18 district?

19 SENATOR GAETZ: Mr. Guthrie.

20 MR. GUTHRIE: District 7 as constituted in
21 the original plan that passed the Senate was
22 made up of three whole counties: Alachua,
23 Bradford and Clay. If we had taken significant
24 population out of Clay County, then District 7
25 would have had to expand into some other

1 county. So instead of being made up of three
2 whole counties, it would have been made up of
3 two whole counties and two partial counties.
4 And keeping counties whole, I think if you read
5 the opinion in its totality, and following
6 political and geographic boundaries are
7 standards that the Supreme Court commends for
8 the Legislature to consider in drafting all of
9 these districts.

10 SENATOR SMITH: But --

11 SENATOR GAETZ: Leader Smith.

12 SENATOR SMITH: Follow-up? But do you --
13 in this one, you didn't keep Volusia whole.
14 You sacrificed Volusia, I guess, to keep Clay
15 whole, and I guess you just gave your reasoning
16 for doing that, okay.

17 SENATOR GAETZ: Any other questions or
18 comments. Senator Braynon?

19 SENATOR BRAYNON: Yes, yes.

20 I think following up on what Senator Smith
21 said, there was -- Marion County, as a result
22 of the changes, gets split into three, whereas
23 it was whole before. So I am not sure if -- so
24 maybe you could give me some logic behind -- or
25 maybe we are starting to get into central

1 Florida, I am not sure, but it is kind of like
2 this -- you know, the jigsaw puzzle effect, and
3 now we are splitting more counties that weren't
4 split before. Marion was split in two before,
5 and now it is split in three, because 8 drags
6 all the way up into -- into Marion.

7 SENATOR GAETZ: Actually, we are splitting
8 fewer counties than we did before in terms of
9 the plan, but could you respond to that and
10 then see if there's any other questions as to
11 northeast Florida before we move to other parts
12 of the state?

13 MR. GUTHRIE: Yes, there are many -- many
14 fewer county splits in the plan as a whole, and
15 you can't isolate your evaluation in terms of a
16 single district. I mean, we -- with each and
17 every district, we make every effort to comply
18 with all the standards set in the Constitution,
19 but in terms of evaluating split counties or
20 split cities, is the Supreme Court recognized
21 in its discussion of the City of Lakeland,
22 there are some areas that are just going to be
23 split, and you need to look at it on a more --
24 on a more global basis.

25 SENATOR GAETZ: But just for the record,

1 how many fewer split counties do we have in the
2 proposed committee substitute over and against
3 the previously approved Senate plan?

4 MR. GUTHRIE: My sheet that has that
5 answer is not right in front of me, but I do
6 have a slide that does that right here. So the
7 number of whole counties in the plan that
8 passed the Legislature and was submitted to the
9 Supreme Court was 36. The number in the
10 proposed remedy is 43. So there are seven more
11 whole counties in this plan than there were in
12 the one that was submitted earlier.

13 SENATOR GAETZ: Okay. Any other questions
14 at this point? Yes, of course, Senator Diaz de
15 la Portilla.

16 SENATOR DE LA PORTILLA: We are leaving
17 northeast Florida. Does that mean we are done
18 with District 9 as well now?

19 SENATOR GAETZ: Any questions you have
20 about District 9 are perfectly germane right
21 now.

22 SENATOR DE LA PORTILLA: Thank you, Mr.
23 Chairman.

24 Just the compactness numbers, the convex
25 hull, the Reock and the Polsby, what are --

1 what is the comparison between what it was
2 under 1176, which we passed in January, and
3 what the proposed remedy does?

4 MR. GUTHRIE: Okay. The district became
5 more compact. The convex hull went from .61
6 under the original plan, or the plan that
7 passed earlier this year, to .78; the Reock
8 ratio went from .16 to .49, a huge increase;
9 the Polsby-Popper ratio went from .13 to .36.
10 So District 9 in this configuration is
11 substantially more compact by all of the
12 measures than the earlier District 9.

13 SENATOR DE LA PORTILLA: Okay. Thank you.

14 SENATOR GAETZ: Other comments or
15 questions at this point? Senator Gibson, did
16 you -- okay.

17 Please go forward, Mr. Guthrie. Thank you
18 very much.

19 MR. GUTHRIE: The next area we are going
20 to look at is the central Florida area, and the
21 Court took issue in particular with proposed
22 Senate District 10 in Lake and Orange Counties.
23 The Court said that visual -- or "District 10
24 is visually non-compact as a result of the
25 bizarrely-shaped appendage between Districts 12

1 and 14. The dividing line between District 10,
2 the District 10 appendage, and surrounding
3 Districts 12, 13 and 14 does not consistently
4 follow any particular political or geographic
5 boundary. District 10 violates constitutional
6 mandates because it is visually non-compact
7 with an appendage that reaches out to clearly
8 encompass an incumbent."

9 So the District 10 is the pink district
10 that is the southern portions of Lake County
11 and western portions of Orange County. There
12 is an African-American opportunity district,
13 District 12, in the Orlando area, and there is
14 an appendage -- what the Court calls an
15 appendage in the Winter Park community and
16 other areas east of Orlando that are affluent,
17 heavily white areas that do not fit very well
18 into either District 12 or the minority
19 opportunity district for African-Americans, nor
20 the newly created District 14, the minority
21 opportunity district for Hispanics.

22 The number of people living in this
23 appendage was 160,000 people. So even though
24 it is small and even though the Court
25 determined that it was -- included the

1 residents of the Senate Majority Leader, it
2 also included lots and lots of other people; in
3 fact, a third of a Senate district is made up
4 by this territory right here east of Orlando.

5 SENATOR GAETZ: And, Mr. Guthrie, when you
6 go to the proposed remedy, would you also
7 remark to how the House treated this issue,
8 because one of the questions that sometimes
9 arises is, how could the House get it right and
10 we get it wrong. Part of the reason is that
11 that so-called appendage forms a House
12 district, or thereabouts, and is entirely
13 compliant. The problem is that Senate
14 districts are three times bigger than House
15 districts. So this was a case of doing the
16 right thing, we thought for the right reasons,
17 but optically, you know, it looks different,
18 and the Court drew the conclusion that they
19 drew. Could you get us to the remedy, Mr.
20 Guthrie?

21 MR. GUTHRIE: So on the remedy -- and the
22 other thing we ought to look at before we flip
23 away from this slide is the Court did not rule
24 that District 12 was invalid, but they did
25 indicate that the extension or the appendage

1 going into Sanford was something that the
2 Senate might want to consider, using the same
3 sorts of analysis that the Court had performed
4 in the Jacksonville area. So they --

5 SENATOR SIPLIN: Mr. Chair?

6 SENATOR GAETZ: Senator Siplin, and then
7 we will go to -- we will go to you, Senator
8 Gibson. Senator Siplin.

9 SENATOR SIPLIN: Where was the language at
10 that referred to that appendage in Sanford,
11 Florida?

12 SENATOR GAETZ: Mr. Guthrie, can -- I'm
13 sorry, Mr. Bardos, could you help us with that,
14 please? Senator Siplin's question, if I
15 understood correctly, was in reference to Mr.
16 Guthrie's comment that the appendage going into
17 Sanford was remarked on by the Court, and
18 Senator Siplin's question is, I think -- what
19 was the remark?

20 SENATOR SIPLIN: Well, Mr. Chairman, first
21 of all, did the court opinion declare District
22 12 unconstitutional or constitutionally
23 invalid? That is the first question.

24 SENATOR GAETZ: Yeah, the answer to that
25 question is no, but, and here comes the but.

1 SENATOR SIPLIN: Okay.

2 MR. BARDOS: The answer is no. I am
3 looking for the specific language. I will need
4 to look at the opinion. But the Court did
5 direct us to conduct a functional analysis on
6 those two districts, so it stated that our --
7 it questioned the justification for District
8 10's appendage because the functional
9 analysis --

10 SENATOR GAETZ: We are on District 12.

11 MR. BARDOS: -- hadn't been performed on
12 District 12 or 13, the neighboring districts.

13 SENATOR GAETZ: Okay. And then, Senator
14 Gibson, you had a question, ma'am?

15 SENATOR GIBSON: Thank you, Mr. Chair.

16 In terms of -- okay, 12 is a minority
17 access district, you said, right? That is --
18 let me get that straight first. Is that what
19 we said?

20 SENATOR GAETZ: Yes, ma'am.

21 SENATOR GIBSON: Okay. Well, in terms of
22 the compactness formula the way it currently is
23 and the compactness formula in the new plan, I
24 would just like to know if they are similar,
25 because 12 almost looks like the new Duval, as

1 far as I am concerned. I don't see any issue
2 with the shape.

3 SENATOR GAETZ: Well, Senator Gibson, if
4 you would let us go to the remedy, and then
5 visually we can see it and answer your question
6 hopefully to your satisfaction.

7 Why don't you go to the remedy.

8 MR. GUTHRIE: Okay. So with the remedy,
9 what we did do is conduct a functional analysis
10 of -- we determined to the satisfaction of
11 staff that using the same sort of analysis that
12 the Court used in Jacksonville, that it would
13 be possible to create a minority opportunity
14 for African-Americans in the Orange County area
15 without extending into Seminole County, and so
16 we made a choice to recommend that the
17 extension into Sanford not be included in the
18 proposed committee bill.

19 The voting age population of this
20 resulting District 12 is 36.9 percent black
21 VAP, which is less than the 40 percent black
22 VAP in the district that was passed by the
23 Legislature earlier. With the surrounding
24 districts, we were able to keep the Hispanic
25 district south of Orlando right at a 50 percent

1 Hispanic voting age population district. We
2 determined through the functional analysis that
3 lowering the Hispanic voting age population by
4 any appreciable amount with that district would
5 create significant risk that Hispanic voters
6 would not have opportunities to elect a
7 candidate of their own choice.

8 The two minority districts merge together
9 in Orlando, so there is no corridor going
10 through at that location, and so we were left
11 with this -- what the Court called an appendage
12 of 160,000 people that we needed to make into a
13 district of 470,000 people.

14 As Chairman Gaetz already alluded, this
15 area east of Orlando between an Hispanic
16 opportunity district and an African-American
17 opportunity district already in the House plan
18 was a single district. The House also had a
19 couple districts going out into east Orlando,
20 extending over into Brevard County, so putting
21 that together, it seemed to be a logical choice
22 to just create a district in east Orange County
23 and northern Brevard County. The district
24 follows county boundaries for a good portion of
25 its perimeter, and that is where it is.

1 SENATOR SIPLIN: Mr. Chair?

2 SENATOR GAETZ: Yes, of course, Senator
3 Siplin.

4 SENATOR SIPLIN: I have a question to the
5 lawyers. It seems like the Hispanic seat,
6 number 14, has an appendage from Orange County,
7 Osceola County and Polk County, the little
8 southwest portion of it. Is that -- is that --
9 is that an appendage?

10 SENATOR GAETZ: Is it what, sir?

11 SENATOR SIPLIN: Is that an appendage?

12 SENATOR GAETZ: Mr. Bardos?

13 SENATOR SIPLIN: That was analogous to the
14 appendage that 12 had in --

15 SENATOR GAETZ: Appendage by any other
16 name.

17 MR. BARDOS: We did the functional
18 analysis on District 14, and the reason that it
19 assumes that shape is because we, in performing
20 that functional analysis, came to the
21 conclusion that a lesser Hispanic population in
22 that district would threaten the ability of
23 Hispanics to elect their candidate of choice in
24 that district.

25 So, for example, if we look at voter

1 registration in District 14, 47.5 percent of
2 registered Democrats are Hispanic, but in the
3 Democratic primary, only 28 percent of
4 Democratic voters were Hispanic. So there are
5 turnout issues there that would -- that
6 suggested a lower Hispanic voting age
7 population there might not be sufficient to
8 elect the candidate of choice in that district.

9 SENATOR GAETZ: Other comments, questions?
10 Yes, Senator Latvala.

11 SENATOR LATVALA: Mr. Guthrie touched on
12 this sort of, but I had noticed as I was
13 working on preparing the amendment that I have
14 today that deals with the Orange
15 County/Seminole County situation, that there
16 are three House districts, House District 47,
17 49 and 50, which almost exactly fit in the same
18 arrangement that we have there for District 10,
19 not exactly, but could be made into exactly
20 fitting in there, and -- which is a concept of
21 nesting that, you know, in prior years,
22 redistricting has been considered from time to
23 time as the idea of nesting three House
24 districts in each Senate district and as
25 actually done in other states.

1 What I am wondering is since we have a
2 situation where we have had the Supreme Court
3 validate those three House districts, what our
4 attorneys think about the -- whether that would
5 improve our position of going back to the Court
6 with a Senate district that basically was
7 exactly the nested three House districts, which
8 they have already approved?

9 SENATOR GAETZ: Mr. Bardos, I would like
10 to ask you to comment on that, and
11 Ms. Tunnickliff, if you could be ready to chat
12 about it as well.

13 MR. BARDOS: Well, there are some who
14 contend that nested districts are preferable,
15 others who contend that they are not. The
16 League of Women Voters, for example, initially
17 produced a plan that nested House districts
18 within Senate districts, and then subsequently
19 produced a plan that did not do that, and they
20 assigned pretty valid reasons to the Court for
21 the change. So there are different
22 considerations there. I think it would also
23 depend on the specific demographics within the
24 district. I think a general abstract statement
25 that nested districts are preferable, I think

1 that would be debateable, but we would have to
2 look at the specific districts in question.

3 SENATOR GAETZ: Ms. Tunnickliff, do you
4 have anything to add to that, ma'am?

5 MS. TUNNICLIFF: I don't. I agree with
6 Mr. Bardos on that.

7 SENATOR GAETZ: Okay. But, Senator
8 Latvala, did you want to follow up on that,
9 sir?

10 SENATOR LATVALA: Well, it would just seem
11 to me as a layman that if they had approved the
12 three House districts, that it would be a
13 little bit to our advantage to try to follow
14 their lead and put those three House districts
15 together in a Senate district. And since, you
16 know, it is basically -- you know, we have the
17 challenge there of trying to preserve two
18 minority seats to give the minorities that live
19 in those seats, both the Hispanics in 14 and
20 African-Americans in 12, the opportunity to
21 elect a person of their choice. That leaves,
22 you know, some folks in the middle. And
23 whether you call it an appendage or whether you
24 come up with a different name, you know, I am
25 just trying to find the best way possible of

1 treating that situation, and it did occur to me
2 that those three House districts would
3 mirror -- would allow us to treat that and then
4 have that as a justification for why we have
5 done it when we go back to the Court. So just
6 my observation.

7 SENATOR GAETZ: Thank you, Senator
8 Latvala.

9 Senator Negron, did you wish recognition?

10 SENATOR NEGRON: No, sir.

11 SENATOR GAETZ: Anyone else at this point?

12 Mr. Guthrie, why don't you proceed and
13 give us -- here, again, there were ripple
14 effects of remedying the problem that was
15 pointed out in central Florida, and can you
16 comment on any effects -- any ripple effects
17 that were material that affected other
18 districts and then -- oh, there was one
19 question that didn't get answered yet. Senator
20 Gibson, I think -- I think if I understood her
21 correctly was asking for a -- some analysis of
22 the geometry of District 12 then and now, then
23 being the Senate approved plan, and now being
24 the remedial plan. Can you comment on that?

25 SENATOR SIPLIN: Mr. Chair, I think her

1 point was that her seat -- her contour of her
2 new district is the same contour as my old
3 district that the Senate passed, and she was
4 concerned about now that the new -- her new
5 Senate seat has that contour, but you are
6 taking off a part of my former seat, that was
7 her question.

8 SENATOR GAETZ: Well, let's do that,
9 because that is faithful to what Senator Storms
10 and Senator Diaz de la Portilla wanted us to
11 do, too. Let's put on the record what are the
12 geometric indices as to 12, and then we can
13 thereby see a comparison to what was done in
14 northeast Florida.

15 MR. GUTHRIE: Yes, Mr. Chairman.

16 With District 12, the convex hull of the
17 plan that passed the Legislature in February
18 was .41. The convex hull of the proposed
19 committee substitute is .74.

20 SENATOR GAETZ: A substantial improvement.

21 MR. GUTHRIE: The Reock ratio goes from
22 .24 to .40. And then the Polsby-Popper score
23 goes from 0.07 to .31.

24 SENATOR GAETZ: Okay. Thank you. And are
25 there any other check list issues? I know you

1 are kind of helping us here, Senator Storms, to
2 make sure we lay everything into the record
3 that we need to here verbally. Any other check
4 list issues that you think we have not
5 responded to fully or appropriately in central
6 Florida?

7 Senator Diaz de la Portilla.

8 SENATOR DE LA PORTILLA: And just to close
9 the loop on that, so we have made in the remedy
10 District 12 more -- way more compact than what
11 it was and what we passed out of -- as a bill
12 in January, and in terms of the functional
13 analysis and performance, there again isn't a
14 significant difference in terms of how those
15 districts function in an election. Is that
16 right?

17 SENATOR GAETZ: Is that correct?

18 MR. GUTHRIE: What we determined,
19 Mr. Chairman and Senator Diaz de la Portilla,
20 was that blacks would make up 56.2 percent of
21 the voters in the Democratic primary, the
22 blacks are 89 percent Democratic, and the
23 Democratic candidates are consistently
24 successful in winning election in that
25 district. So blacks -- the black candidate of

1 choice wins the primary, and with Democratic
2 crossover is able to win the general election.

3 SENATOR DE LA PORTILLA: Follow-up?

4 SENATOR GAETZ: Of course, Senator Diaz de
5 la Portilla.

6 SENATOR DE LA PORTILLA: And that is under
7 -- and that is under the proposed remedy, so
8 while making it more compact, it would still
9 perform as a black seat, correct?

10 MR. GUTHRIE: That is correct, Senator
11 Diaz de la Portilla, and that is the sort of
12 analysis that we believe that, based on what
13 the Court did in Jacksonville, they were
14 expecting us to do here.

15 SENATOR GAETZ: Senator Gibson.

16 SENATOR GIBSON: Thank you, Mr. Chair, and
17 this kind of goes back again to northeast
18 Florida and what is proposed as Senate District
19 6 to include Senate District 12. Crossover, is
20 that a definition that the Court used or made
21 reference to that would be supposedly helpful
22 to electing a minority candidate?

23 SENATOR GAETZ: Mr. Guthrie?

24 MR. GUTHRIE: Do the attorneys have an
25 answer on --

1 SENATOR GAETZ: Well, you used the term
2 "crossover," and my guess is that --

3 MR. GUTHRIE: I do not know whether that
4 word is used in the opinion or not.

5 SENATOR GAETZ: I guess the answer is we
6 don't know if it is in the opinion. Mr.
7 Bardos.

8 MR. BARDOS: It is used in the opinion,
9 but --

10 THE CLERK: Oh, it is, it is.

11 MR. BARDOS: But not in reference to
12 District 12 as I am looking over it now. Just
13 rereading it, it seems that the Court is
14 describing District 12 in reference to its
15 black VAP. It does mention its Hispanic VAP,
16 but it does -- it refers to it as including the
17 highest concentration of black residents from
18 Orlando, Ocoee, et cetera. So it seems that
19 the Court was placing primary emphasis on black
20 voters in that district.

21 SENATOR GAETZ: Other comments or
22 questions? Leader Smith, did you have your
23 hand up, sir?

24 Senator Gibson, did you want to follow up,
25 ma'am?

1 SENATOR GIBSON: Thank you, Mr. Chair.

2 Since there is such a thing as the Court
3 finds crossover, maybe later I would like to
4 know if that term was used in reference to this
5 configuration of District 6 and any other
6 minority opportunity or access district,
7 believing that crossover somehow should factor
8 into the voting population as a means of saying
9 it is non-diminishing to a minority district.

10 SENATOR GAETZ: Ms. Tunnickliff, while we
11 are talking, would you mind running your
12 practiced eye over the opinion so that we can
13 give a thorough answer to Senator Gibson's
14 question?

15 MS. TUNNICLIFF: Yes.

16 SENATOR GAETZ: Other comments or
17 questions at this time? Yes, Senator Gibson.

18 SENATOR GIBSON: Thank you, Mr. Chair.

19 And my question goes to -- as we continue
20 to plod our way through, and I guess it is
21 standard procedure to use certain elections
22 going backwards to get us to the numbers where
23 we are today. My question then goes to
24 particularly the election cycle wherein the
25 current President, Barack Obama, was elected,

1 which in most people's mind is an anomaly, the
2 numbers -- I mean, it was certainly a very high
3 turnout. So how do we then -- to make sure
4 that we are getting true representative numbers
5 going forward, which is what this is about, how
6 do we average in the higher turnout in the
7 Presidential general election in '08 to make
8 sure that we are on the right course to have
9 the proper lines? Does the Court deal with
10 that at all, and are we precluded from dealing
11 with an anomaly?

12 SENATOR GAETZ: No, ma'am, we are not
13 precluded from dealing with an anomaly, and
14 that is why the handouts that you have aren't
15 limited to just the Presidential election in
16 2008. They also address the gubernatorial
17 election in 2010 and the gubernatorial election
18 in 2006, as well as the Presidential election.
19 So there are three election cycles that tend to
20 be used there. Yes, ma'am.

21 SENATOR GIBSON: Thank you, Mr. Chair, and
22 I get that, but what I am saying is the 2008
23 election, the numbers are extremely elevated
24 because it was a historic time and a lot more
25 peopled turned out. And so my question is, do

1 we have to use these particular election
2 cycles, or is there a way to average out other
3 than using these three?

4 SENATOR GAETZ: I am not -- I am not sure
5 if there are other indices that you think are
6 important that you might want to use to
7 buttress an amendment or make an argument, but
8 these are -- this is what the Court used, this
9 is what -- what we have available. I am not
10 sure how Adlai Stevenson did there in 1956.
11 Probably did pretty well, probably did pretty
12 well. I remember his nominating speech, I am
13 that old, I am that old.

14 Any other comments or questions at this
15 point? Senator Simmons.

16 SENATOR SIMMONS: I have some questions.
17 Mr. Guthrie, I am looking at the northern
18 border of District 13, and I ask you what
19 boundary lines and what methodology did you use
20 to create an approximately -- it looks like a
21 10-mile strip to the north of Seminole County?

22 SENATOR GAETZ: Mr. Guthrie.

23 MR. GUTHRIE: Yes, thank you,
24 Mr. Chairman.

25 The -- so we were about to jump into the

1 ripple effect of moving two-thirds of District
2 10 from the west side of Orange County and Lake
3 County to the east side of Orange County and
4 Brevard County. One of those ripple effects
5 was that -- trying to keep counties together as
6 the Supreme Court commended. We filled out the
7 entire population of east Orange County and the
8 areas of Winter Park and Maitland with District
9 10, and so District 13 then, with the District
10 12 coming out of Seminole County, District 13
11 includes all of Seminole County, and District
12 13 is still shy about 50,000 people from being
13 a 470-person Senate district. So the
14 additional population was made up by crossing
15 the Volusia County line, getting the entirety
16 of the City of De Bary, a portion of the town
17 of Deltona, and then trying to follow political
18 and geographic boundaries east and south to
19 follow a logical and reasonably compact
20 alignment for that district.

21 SENATOR GAETZ: Other comments or
22 questions?

23 SENATOR SIMMONS: Yes, and --

24 SENATOR GAETZ: Yes, Senator Simmons, you
25 are recognized.

1 SENATOR SIMMONS: Thank you. And is there
2 any appendage that you see on this -- on this
3 map for central Florida?

4 SENATOR GAETZ: And I apologize, Senator
5 Simmons, could you speak a little bit more
6 closely into the mike?

7 SENATOR SIMMONS: Yes. Is there any
8 appendage that you see?

9 MR. GUTHRIE: Well, appendage is in the
10 eye of the beholder. Some might consider or
11 might interpret the configuration of District
12 14 as it sits in this proposal as being not as
13 compact as the surrounding districts. I think
14 that would be correct. But as I mentioned
15 earlier, staff determined that based on the
16 functional analysis we performed, any reduction
17 in the Hispanic numbers for this District 14
18 would materially impact the ability of
19 Hispanic -- the Hispanic minority to elect
20 candidates of their own choosing.

21 SENATOR DE LA PORTILLA: Follow-up?

22 SENATOR GAETZ: Yes, Senator Diaz de la
23 Portilla.

24 SENATOR DE LA PORTILLA: So just to tie
25 the different things together, the Tier 1 to

1 Tier 2 kind of analysis, so based on that, for
2 Tier -- I mean, for District 14 rather,
3 compactness gives way to the Tier 1 criterion
4 of minorities -- language or ethnic minorities
5 being able to select a candidate of their
6 choice, correct?

7 MR. GUTHRIE: That is exactly correct.

8 SENATOR DE LA PORTILLA: Okay, thank you.

9 SENATOR GAETZ: All right. Thank you very
10 much. Please move on.

11 MR. GUTHRIE: While we are on the ripple
12 effects of moving the two-thirds of a Senate
13 district over to the east side of Orlando, it
14 also resulted in a reconfiguration of District
15 8. District 8 in the earlier proposal was
16 portions of Volusia County, excluding the
17 Daytona Beach and areas north of Daytona Beach.
18 It had a part of Brevard County and it had a
19 part of Orange County, with District 10 moving
20 to the east side of Orlando. We've got a
21 clockwise rotation going on throughout --
22 excuse me, a counter-clockwise rotation going
23 on throughout central Florida. So District 8
24 gets pushed into Lake County and Marion County,
25 District 11 gets pushed out of Palatka -- or,

1 excuse me, out of the portions of Putnam
2 County, excluding the City of Palatka, and it
3 is now in part of Marion County and a
4 significant share, the lion's share of Lake
5 County, plus The Villages portion of Sumter
6 County, which is not affected by this map, and
7 some of the Wekiva Springs area east of Apopka.
8 And then finally finishing the rotation, the
9 boundary for District 11 through southern Lake
10 follows the Lake County boundary exactly, and
11 there is a district south of there which
12 includes the City of Lakeland. We are going to
13 look at that district in detail a little bit
14 later, but all of that is a ripple effect of
15 the shifting of population from the west of
16 Orlando to the east.

17 SENATOR GAETZ: Comments or questions?

18 SENATOR LATVALA: Mr. Chairman?

19 SENATOR GAETZ: Yes, of course, Senator
20 Latvala.

21 SENATOR LATVALA: You said you want to
22 talk about the Lakeland district later, but I
23 am going to ask this while I am thinking about
24 it here. Why did you -- why did you find it
25 necessary to push some of that Lakeland

1 district into Hillsborough County?

2 MR. GUTHRIE: Okay.

3 SENATOR GAETZ: Mr. Guthrie?

4 MR. GUTHRIE: Yes, I am going to flip --
5 okay. So this is the slide we looked at last
6 week. It shows the boundary of the City of
7 Lakeland in red here. That city is divided
8 between two districts, District 24, which is
9 Plant City, a portion of Lakeland, Mulberry,
10 and then the portions of Manatee County that
11 are not in the minority opportunity District
12 19. So in the -- in the -- in the remedy,
13 Plant City is kept with Lakeland, but it is in
14 more of an I-4 district that goes from Plant
15 City to the Disney area and keeps together the
16 towns of Lake Alfred, Auburndale, Lakeland and
17 Plant City. So those are all whole cities in
18 this proposed district.

19 SENATOR LATVALA: Mr. Chairman?

20 SENATOR GAETZ: Yes, of course.

21 SENATOR LATVALA: But you could have kept
22 all those people right in Polk County, you
23 know, pushing them down into District 26
24 though. I mean, in other words, there is
25 nothing said that we had to separate Plant City

1 from the rest of Hillsborough County, is there?
2 I mean, that is just a little -- I mean, it is
3 problematic. I have heard from the Mayor, I
4 have heard from the city council, I have heard
5 from the Chamber of Commerce. I just -- it is
6 just a peculiar arrangement there, especially
7 since you have a big county there to put the
8 rest of those people in.

9 MR. GUTHRIE: So --

10 SENATOR LATVALA: And that is not the
11 configuration -- the District 24 did not come
12 all the way up to the corner of Hillsborough
13 County, it only came to Plant City. So as you
14 see there, that corner wasn't in District 24
15 before, so you really weren't keeping what was
16 there already. And I am just wondering, you
17 know, why we found it necessary to do that.

18 MR. GUTHRIE: The population in the
19 extreme northeast corner of Hillsborough County
20 is very sparsely populated, and the rationale
21 for this particular configuration was trying to
22 achieve the level of compactness and logical
23 boundaries that the Court has recommended to
24 us. So I don't think it was particularly --
25 that did not result in a whole lot of a

1 population shift.

2 SENATOR LATVALA: One more?

3 SENATOR GAETZ: Of course, sir.

4 SENATOR LATVALA: Well, there's 42,000
5 people there, I think, and I guess the question
6 again is, why were you not able to just push
7 those further south in Polk County and keep
8 them in the same county?

9 MR. GUTHRIE: I -- that -- Mr. Chairman?

10 SENATOR GAETZ: Of course.

11 MR. GUTHRIE: With the redistricting
12 software, you can model districts literally
13 millions of ways, and we chose a particular
14 solution, which I and my staff recommended to
15 the Chairman as conforming to the judgment of
16 the Supreme Court, following the standards in
17 the State Constitution and responding in a
18 responsible way to the -- all of the good input
19 that this Committee received from the public
20 during our extensive public hearing process.
21 We made choices along the way, and that is not
22 to say any of these districts are drawn in the
23 only way or even the best way.

24 SENATOR LATVALA: Thank you.

25 SENATOR GAETZ: Was there somebody else

1 before Senator Simmons? I'm sorry. Senator
2 Simmons.

3 SENATOR SIMMONS: Mr. Guthrie, could you
4 please -- the original way that the -- that you
5 drew Senate District 12 under the original plan
6 which the Florida Supreme Court has not found
7 unconstitutional, the -- could you give me --
8 give us the Reock and the convex hull analysis
9 of District 12 compared to District 19, which I
10 understand to be another minority district, and
11 explain to me, please, when the Florida Supreme
12 Court looked at District 12, did not -- in the
13 face of a challenge to its constitutionality,
14 did not find it unconstitutional, and just give
15 me the comparison between 19 and 12.

16 MR. GUTHRIE: Okay. So we are looking at
17 the plan that passed the -- the plan that
18 passed during the regular session of the
19 Legislature. We are going to compare Senate
20 District 9 -- no, no, Senate District 12 with
21 Senate District 19 in terms of the geometric
22 measures of compactness. So the convex hull
23 score for District 12 was .41 in the Senate
24 Joint Resolution 1176. For District 19, the
25 convex hull score was 0.45. .41 and .45. For

1 Reock --

2 SENATOR SIMMONS: I'm sorry, I didn't get
3 that. What is the convex hull for District 19?

4 MR. GUTHRIE: For District 19, it is .45;
5 for District 12, it is .41. In both cases, we
6 are looking at SJR 1176.

7 The Reock ratio is the same between those
8 two districts, .24 in 12, and .24 in 19, and
9 the perimeter ratio is .07 in 12 and .11 in 19.
10 In all cases, higher numbers are better than
11 lower numbers in terms of geometric
12 compactness, but slight differences are not
13 hugely significant.

14 SENATOR SIMMONS: So is it fair to say
15 that under these analysis, that 19 and 12 are
16 literally functionally identical?

17 SENATOR GAETZ: With perhaps the sole
18 exception that 19 was not remarked on by the
19 Supreme Court, and 12 was.

20 MR. GUTHRIE: And I would say that they
21 have very similar geometric compactness scores,
22 yes.

23 SENATOR GAETZ: Any other comments?
24 Leader Rich.

25 SENATOR RICH: Thank you. Mr. Chair, I

1 just wanted to just draw attention, I thought
2 that maybe Mr. Bardos was going to, but
3 actually both 12 and 19 were mentioned on page
4 128 --

5 SENATOR GAETZ: I stand corrected.

6 SENATOR RICH: -- and 29 where they talk
7 about "A visual inspection of the plan reveals
8 a number of districts that are clearly less
9 compact than others with visually bizarre and
10 unusual shapes. These districts include," and
11 included in there are 12 and 19.

12 SENATOR GAETZ: I stand corrected, thank
13 you.

14 Other comments or questions at this point?
15 Yes, of course, thank you for coming today, and
16 we welcome Senator Dockery.

17 SENATOR DOCKERY: Thank you, Mr. Chair,
18 and on the Lakeland issue, Senator Latvala
19 brought up the former map with Plant City
20 versus the current map with Plant City.

21 SENATOR GAETZ: Uh-huh.

22 SENATOR DOCKERY: And I haven't heard
23 anything from Plant City, but I do appreciate
24 you and your staff putting Lakeland back into
25 one district and creating a north Polk County

1 district in District 16. Whether or not it
2 goes into Hillsborough County is not a big
3 issue for me, but my question kind of to
4 Senator Latvala, but maybe just as a comment
5 then is the previous map of Hillsborough had
6 Plant City in a Manatee district. Was Plant
7 City okay with it being a Manatee district but
8 not a Polk County district?

9 SENATOR GAETZ: Senator Latvala, would you
10 care to comment, sir?

11 SENATOR LATVALA: I didn't say I liked
12 that either.

13 SENATOR GAETZ: All right. Anything else
14 on this at the moment?

15 Please proceed, Mr. Guthrie.

16 MR. GUTHRIE: I guess to finish out the
17 rotation, the last bit of that is the District
18 26 getting pushed in -- more into Osceola
19 County, and as a result of all these changes,
20 Polk County, instead of being divided among
21 four Senate districts, will be divided
22 primarily between two Senate districts. A
23 solid anchor of District 16 to the north and
24 District 26 to the south will be Polk County,
25 and then the Haines City neighborhoods, which

1 are heavily Hispanic, will be included in the
2 Hispanic opportunity District 14. So those are
3 the ripple effects of the central Florida
4 changes we made.

5 We are now ready to move to southwest
6 Florida where the Supreme Court objected or
7 found invalid Senate District 30.

8 SENATOR GAETZ: Before you go, Senator
9 Dockery, did you have any other comment, ma'am?

10 SENATOR DOCKERY: Just to thank you for
11 what you have done to clean up the Polk County
12 area, and if it wasn't for the minority
13 district, as Mr. Guthrie said, it would be --
14 Polk County population of 600,000 would be in
15 two, but because of the minority district, we
16 are in three, and that is still good. So thank
17 you very much.

18 SENATOR GAETZ: Yes, ma'am, thank you.

19 I apologize, Mr. Guthrie, you were in
20 southwest Florida.

21 MR. GUTHRIE: And the Supreme Court
22 included in its opinion a graphic similar to
23 this that showed that the connection between
24 Naples and Cape Coral was a -- some beaches or
25 beach property along the western shore of Lee

1 County, and as a result, the Supreme Court
2 found this to be unnecessarily non-compact and
3 declared District 30 to be invalid as to the
4 portions of District 30 that are not adjacent
5 to the District 40. So the Supreme Court in
6 its opinion recognized the fact that Senate
7 District 40 is a minority opportunity district
8 in Hendry, Collier, Monroe and Miami-Dade
9 Counties for which retrogression of minority
10 voting opportunities would be a significant
11 issue, and the Supreme Court did not suggest
12 that the correction to any of the boundary
13 problems or compactness issues with District 30
14 need to consider its boundary with Collier
15 County.

16 That did not give the staff many options
17 in terms of where to go to create a more
18 compact way of filling out District 30. Let's
19 go to the excerpts from the opinion before we
20 jump to that: "District 30 is visually
21 non-compact and the mathematical measures of
22 compactness support this conclusion. In
23 addition to being non-compact, District 30
24 splits counties, municipalities and
25 geographical features. With the exception to

1 the boundary it shares with District 40,
2 District 30 does not need to be configured to
3 avoid diminishing minority voting strength.
4 While the Legislature intended to tie coastal
5 communities together, this is not a valid
6 constitutional justification for a departure
7 from Tier 2 standards."

8 So what the staff recommended in the
9 proposed committee substitute is that instead
10 of extending along the beaches to the Sanibel
11 and Cape Coral population centers, that the
12 District 30 fill out by including Bonita
13 Springs, following geographic and political
14 boundaries through the areas south of Ft. Myers
15 and south of Ft. Myers Beach, and that we
16 include all of the community of Lehigh Acres.
17 So the boundary on the north here and around at
18 the top is the Lehigh Acres census designated
19 place, and then once we get out of Lehigh
20 Acres, we follow normal political and
21 geographic boundaries to Estero Bay and then
22 out between Ft. Myers Beach and Bonita Springs.
23 So that is the reconfiguration of District 30.

24 Because the Supreme Court mentioned
25 geographic compactness measures for that

1 district, it probably is wise for us to take a
2 look at how the new district fares in
3 comparison with the old one.

4 The convex hull score for the district
5 that passed the Senate in -- or the Legislature
6 in February was .56. That is increased here to
7 .67. The Reock score goes from .19 to .32, and
8 the Polsby-Popper score goes from .17 to .24.
9 So on all three of the geometric measures of
10 compactness, the reconfigured district is
11 measurably more compact than the one that was
12 there -- that it replaces.

13 SENATOR GAETZ: Let's stop there for
14 questions as to southwest Florida. Comments?
15 Senator Braynon.

16 SENATOR BRAYNON: Thank you, Mr. Chair.

17 I know that in the opinion they talked
18 about our use of geographic and political
19 lines, and when we are drawing things and we
20 got outside of maybe just using a city or
21 county, that we weren't consistent, whereas the
22 House was consistent, specifically along any
23 specific district. Do you feel in your opinion
24 that this line here is a consist- -- we are
25 more consistent with these geographic

1 boundaries that we are using for District 30 on
2 the northern part?

3 SENATOR GAETZ: Mr. Guthrie.

4 MR. GUTHRIE: I believe that the
5 boundaries that the Senate drew before, and
6 even more so, the boundaries that we drew now
7 were faithful to the Constitution's direction
8 that we follow political and geographic
9 boundaries. It may be that, you know, some of
10 that evidence wasn't -- wasn't well-presented
11 or whatever. But in this case, what we are
12 doing is following the Estero River to U.S.
13 Highway 41 -- and this will just serve as an
14 example -- and then going across Alico Road, a
15 major arterial road in Lee County, let's just
16 trace the border here, and we could do this
17 anywhere in the map and get a similar result.
18 The district then heads north on Interstate 75
19 to State Road 865 where it heads east to State
20 Road 82. This is the southern boundary of the
21 Lehigh Acres census designated place. And at
22 that point, we traced the boundary of the
23 Lehigh Acres census designated place until we
24 get to the corner of Hendry County.

25 So I do believe that here and elsewhere we

1 were faithful to the standard in the State
2 Constitution that districts follow political
3 and geographic boundaries where feasible.

4 SENATOR GAETZ: Other comments or
5 questions? If not, please proceed.

6 And those who are keeping track at home,
7 are we -- were there any -- were there any
8 minority voting rights issues there that we
9 need to be cognizant of as we complete our
10 check list, Mr. Guthrie?

11 MR. GUTHRIE: Well, there are minority
12 voting rights issues in District 40, to be
13 sure, which is why the Supreme Court
14 recommended that we not impact that border in
15 trying to cure the compactness issues that it
16 found with District 30. In District 23 and 30,
17 we have -- District 30 is six percent black VAP
18 and 19 percent Hispanic VAP. District 23 is
19 6.5 percent black VAP and 12.1 percent Hispanic
20 VAP. Do you want to look at the functional
21 analysis? I do not believe there were any
22 voting rights concerns with District 23 or
23 District 30.

24 SENATOR GAETZ: Any questions along those
25 lines?

1 Mr. Bardos reminds me that -- and if you
2 could just go back to the point that Leader
3 Rich correctly made that both District 19 and
4 District 12 were mentioned in the Court's
5 opinion, and could you draw the distinction
6 between the two just so that we will all have
7 that understanding before we move on?

8 MR. BARDOS: Both District 12 and District
9 19 were mentioned as districts with low
10 compactness scores, but one consideration that
11 does differentiate them is that District 19 has
12 part of Hillsborough County, which is a covered
13 county under Section 5, and just as it did with
14 District 40 where the Court recognized that
15 District 40 is protected by Section 5 of the
16 Voting Rights Act, that seems to be an
17 additional justification for the district as
18 drawn.

19 SENATOR GAETZ: Okay. Thank you for
20 mentioning that, Leader Rich.

21 Let us move on then.

22 MR. GUTHRIE: The next area we are going
23 to visit is southeast Florida. In particular,
24 the Court took issue with Senate District 34
25 and Senate District 29 in SJR 1174. The Court

1 said, "Districts 29 and 34 were drawn to favor
2 an incumbent and a political party by keeping
3 District 29 essentially the same as its
4 predecessor district. District 29 leans
5 Republican in an area of the state that is
6 largely Democratic. The districts in this
7 area, including District 34, might have been
8 drawn to, quote, make the area as a whole more
9 compact. If the Legislature had drawn logical,
10 compact districts in a neutral manner, the map
11 would likely have reflected five Democratic
12 districts."

13 So the Court looked at the District 34,
14 which was a majority black voting age
15 population district that extended north through
16 Deerfield Beach and Delray, Boynton Beach into
17 West Palm Beach and Riviera Beach. They
18 noticed how that district created a wall that
19 resulted in a coastal district to its east, and
20 the Court determined that those two districts
21 would be invalid and asked the Legislature to
22 come up with a new plan conforming to the
23 judgment of the Court.

24 The Court in its opinion made reference to
25 the League of Women Voters' plan, which in this

1 area what it did was tied together the
2 communities of Ft. Lauderdale and West Palm
3 Beach, with extensions into the Everglades, the
4 conservation areas and the Everglades
5 agricultural area. By removing the connector
6 along the Interstate between Ft. Lauderdale and
7 West Palm, the wall that segregated District 29
8 along the coast was removed, and the League of
9 Women Voters showed how they were able to stack
10 three Senate districts in the C-shaped district
11 that went from West Palm to Ft. Lauderdale.

12 So that was the direction we got from the
13 Court. Staff did a functional analysis similar
14 to what we had done in Jacksonville with
15 District 34. What we discovered was that we
16 could create a majority-minority -- a bare
17 50 percent majority-minority African-American
18 district entirely in Broward County; in fact,
19 entirely north of Interstate 595 in Broward
20 County. We determined through the functional
21 analysis that that district would perform for
22 African-American candidates of choice. The
23 black percentage of primary election voters is
24 61.2 percent, blacks are 90 percent Democratic,
25 and the Democratic candidates win with 80, 82

1 and 75 percent of the general election vote.
2 So it is a situation where you have the black
3 voters being able to influence who gets elected
4 in the primary and with the Democratic
5 candidates consistently winning election.

6 So that -- the approach that staff took
7 here was, number one, we created this District
8 34, 470,000 people in Ft. Lauderdale and
9 surrounding communities. We then wanted to --
10 in the prior plan, there were three districts
11 that crossed over the Broward/Palm Beach County
12 line: District 29, District 34 and District
13 32.

14 The other relevant fact to be aware of
15 here is that District 34, the African-American
16 district, included about 180,000 people out of
17 Palm Beach County, whereas District 32, the
18 western district, had about 150,000 people in
19 Broward County.

20 So the remedy that staff is recommending
21 here is really trading those populations. We
22 take District 34, it grows by 180,000 people in
23 Broward County. District 32, or the western
24 Palm Beach district, we take this piece out,
25 okay, which was 150,000. When District 34

1 grew, most of its growth was not along the
2 coast, but rather, in the neighborhoods west of
3 Ft. Lauderdale, including Margate, Tamarac,
4 Sunrise, Pompano Beach, Lauderhill -- or north
5 Lauderhill. With that population taken out of
6 District 31, it needed to grow to include all
7 of the population that formerly was in District
8 32 in the earlier scenario, or the joint
9 resolution that passed the Senate, and it
10 needed to grow an additional 30,000 people into
11 District 36. So this District 31 includes
12 communities all along western Broward County.
13 The District 36 is very similar to the district
14 that was passed by the Legislature during
15 regular session, fewer people in the Pembroke
16 Pines area, and it makes up that population in
17 the area south of Ft. Lauderdale.

18 As before -- and then we keep working our
19 way counter-clockwise to finish out the
20 remainder of the region. The boundary between
21 Districts 36 and 32, as before, is the Port
22 Everglades. District 32 extends north during
23 the much -- or along the much shortened
24 boundary of District 34 to the Palm Beach
25 County line. At that point, it widens out to

1 the Turnpike, and then just includes the
2 territory north of the Palm Beach County line
3 to Boynton Beach.

4 We also took a good hard look at the West
5 Palm/Riviera Beach area, and discovered that in
6 central Palm Beach County, the communities that
7 formerly were part of District 34, if you look
8 at the Hispanic population and the
9 African-American population combined, was an
10 area where we could provide an opportunity for
11 African-American and minority voters to
12 influence elections.

13 The extension -- there are three precincts
14 in Boynton Beach in this area here. We can
15 flip to the -- to the District Explorer view of
16 the area and see exactly what they are. Let's
17 zoom into that area. Three precincts in
18 Boynton Beach which are more heavily
19 African-American, and those were included with
20 the West Palm/Riviera Beach district, but as
21 you can see here, we are following political
22 and geographic boundaries, we are trying to
23 keep cities intact wherever we can. We are
24 also trying to -- as our Tier 1 consideration,
25 we are trying not to diminish opportunities of

1 minority voters anywhere in the region. And so
2 District 29 now takes on this configuration
3 with West Palm Beach, Riviera Beach and a piece
4 of Boynton Beach included with Palm Beach and
5 Lake Worth, okay.

6 SENATOR GAETZ: Mr. Guthrie, before we go
7 to the functional analysis and the geometric
8 analysis comparison, Senator Sachs has a
9 question.

10 SENATOR SACHS: There is a little Band-Aid
11 here that works. Now we are on, all right.
12 Thank you very much, Mr. Chairman.

13 Mr. Guthrie, what was the most western
14 point for District 32? What was the -- what
15 was the geographic or political dividing line
16 between 32 and 31 and 27, sir?

17 MR. GUTHRIE: In the original, the plan
18 that passed earlier, or --

19 SENATOR SACHS: No, the one that we are
20 looking at right now, the proposed one --

21 MR. GUTHRIE: In this plan, yes.

22 SENATOR SACHS: -- that we want to give
23 back to --

24 MR. GUTHRIE: The boundary is the
25 Turnpike.

1 SENATOR SACHS: And is there a reason why
2 we didn't follow up the Turnpike up from --
3 because reading the Supreme Court decision now,
4 we know that in Tier 2 -- but one of the most
5 important things is compactness. In looking at
6 this entire area, everything looks pretty
7 compact except for 32. That is the only one
8 that we don't have that sense of compactness.
9 It is almost as if you take everything left
10 over from -- you know, from the western side
11 and you just make this long stream of land that
12 goes between two counties. What was the --
13 what was the decision of the staff in defining
14 the westernmost points of District 32?

15 MR. GUTHRIE: Well, the Turnpike was -- is
16 a very, very well-known and significant
17 boundary in that area. Had -- we also were
18 mindful of the impact that put -- if you had a
19 square orientation of District 32 in south Palm
20 Beach County, it would have made it much more
21 of a challenge to create a reasonably compact
22 minority opportunity district in the West Palm
23 Beach/Riviera Beach/Boynton Beach area.

24 SENATOR SACHS: So, if I may, Mr.
25 Chairman, I'm sorry, if I may, Mr. Guthrie, and

1 I know you know this area pretty well as well,
2 because I know we have discussed -- you seem to
3 know every area in Florida extremely well, but
4 is it because of the analysis of the racial
5 minority, is that the reason why, or what is
6 the reason why that we didn't fill in the space
7 between the Turnpike going up north of Boynton
8 Beach up into -- up into the next -- 29? See
9 that little gap there where 27 --

10 MR. GUTHRIE: Sure. As you know, Senator
11 Sachs, that is a very densely populated area,
12 and had that population all been included in
13 District 32, it would have been extremely
14 overpopulated. So you need to either move it
15 in from the east or move it down from the
16 north.

17 SENATOR SACHS: Or move it up from the
18 south.

19 MR. GUTHRIE: Well, up from the south -- I
20 explained how I got to where I was in the
21 south. We started -- and we could have gone
22 either way, we could have started -- and I
23 think we would have gotten the same result
24 either way, but we started at the Broward/Palm
25 Beach County line, west of the minority

1 district, and then just started filling in
2 districts sort of around the horn, being
3 mindful where we could of the Tier 1 concern
4 that we provide opportunities for minority
5 voters, but also looking for political and
6 geographic boundaries and always being mindful
7 of compactness as we went along the way.

8 There is -- you know, this -- were it
9 possible that this district could have
10 perfectly filled in the population all the way
11 to the Turnpike, all the way to where it
12 intersects with District 29, that clearly would
13 have been a more compact and copesettic map,
14 but that equal -- thank you.

15 SENATOR SACHS: You got a quarter word in
16 there, I think, huh, copesettic.

17 MR. GUTHRIE: Even -- well that's --

18 SENATOR SACHS: That's good. So in other
19 words --

20 SENATOR GAETZ: Senator Thrasher and I
21 woke up there, it was one of our words.

22 SENATOR SACHS: Well, thank you for that,
23 because if we had filled that in, then it would
24 be a lot more compact. If we could just move
25 south for a minute on 32, going past 31. Is

1 this the map, this map, is that the only
2 section that we are not following county line?
3 Except for that little blimp there with -- you
4 know, with District 31 into 27, it appears from
5 my reading of this map that that 31 goes a
6 little bit into -- over the county line, but
7 other than that, which probably is for racial
8 equality, is that --

9 MR. GUTHRIE: No, no, actually, the
10 Legislature -- and some of you know way better
11 than I the history of this, but this property
12 was added to the County of Broward by
13 legislative act within the last ten years, I
14 believe.

15 SENATOR SACHS: About three or four years
16 ago, yes, I think it was. Sir, then, going all
17 the way -- well, let me go back to my other
18 question. Thank you, Mr. Chairman --

19 SENATOR GAETZ: Of course.

20 SENATOR SACHS: -- for giving me this
21 leeway, but the -- is this the only -- is 32
22 the only district that dips south so far past
23 the Palm Beach County line?

24 SENATOR GAETZ: Mr. Guthrie?

25 MR. GUTHRIE: In this region?

1 SENATOR SACHS: Palm Beach and Broward.
2 Is there any other -- is there any other
3 district that crosses the Palm Beach/Broward
4 line other than District 32?

5 MR. GUTHRIE: No.

6 SENATOR SACHS: Okay. And one other
7 question.

8 SENATOR GAETZ: Of course.

9 SENATOR SACHS: Thank you, sir.

10 SENATOR GAETZ: Sure.

11 SENATOR SACHS: The southernmost -- as
12 District 32 goes south and is contiguous with
13 District 34, what is the reason, sir, for that
14 wavy line? Is that -- what are we following
15 there? Is that Dixie, Highway 1, I-95? I
16 can't --

17 MR. GUTHRIE: Well, it is -- there are a
18 combination of borders along the way here. It
19 is mostly U.S. 1, State Road 816. We can go in
20 and look at the details. So the state highway
21 curves around here and then we are jumping over
22 to the railroad track, we head north on the
23 railroad track, and at this location we are on
24 State Road 811, keep heading north --

25 SENATOR SACHS: So my question is --

1 MR. GUTHRIE: -- on 811. So we looked for
2 -- and I don't have it memorized, every turn of
3 the map. Up here, I believe what we've got
4 here -- let's turn on the value ramp. I think
5 there is a higher concentration of minority
6 voters just --

7 SENATOR GAETZ: I think, Mr. Guthrie, that
8 that is where we are getting to. I think
9 Senator Sachs raises a very interesting point,
10 and the answer, just as we have talked about,
11 our Tier 1 and Tier 2 analyses and the need to
12 make the check list, I think the answer, and
13 Mr. Bardos has just prompted me here, is that
14 we are less concerned at this point with
15 precise geography as to which -- which road we
16 would use and more concerned with making sure
17 that District 34 retains its 50 percent plus
18 minority population. So I think that -- if you
19 look at the value ramp, if you put that up, if
20 you look at the value ramp, I think that helps
21 explain it, and then if you will understand why
22 we were working hard to make sure that we had a
23 50 percent plus minority district there, that
24 helped defined whether one would go, for
25 example, all the way to U.S. 1 or whether one

1 would take a -- one of the other state roads.

2 SENATOR SACHS: And the reason I ask that,
3 Mr. Chairman, is that the test that we have
4 been using ever since northwest Florida is that
5 any unnecessary appendages or bizarre
6 designs -- and I'm taking these words from the
7 Supreme Court decision -- need to be examined
8 and need to be explained.

9 SENATOR GAETZ: And need to be justified
10 in terms of Tier 1 requirements, which is the
11 point here.

12 SENATOR SACHS: Well, if that is the
13 answer --

14 SENATOR GAETZ: There you go.

15 SENATOR LATVALA: Mr. Chairman?

16 SENATOR SACHS: I just want to be -- I
17 just --

18 SENATOR GAETZ: Senator Latvala.

19 SENATOR LATVALA: Thank you.

20 Mr. Guthrie, this bizarre appendage that
21 goes down here has 155,000 people in it. If we
22 didn't put it with Palm Beach County, what
23 would we do with it?

24 SENATOR GAETZ: Mr. Guthrie.

25 MR. GUTHRIE: I think that is a rhetorical

1 question.

2 SENATOR LATVALA: Well, I mean, is there
3 any other -- the rest of the districts in
4 Broward County are balanced out, so some
5 district has to go across the county lines, is
6 that correct?

7 MR. GUTHRIE: That is correct.

8 SENATOR LATVALA: And there's 155,000
9 people in this district that need to go
10 somewhere, is that correct?

11 MR. GUTHRIE: I don't have the exact
12 number --

13 SENATOR LATVALA: I am reading it off the
14 sheet, 155,000, okay. So --

15 SENATOR GAETZ: Of course.

16 SENATOR LATVALA: -- whether we cut them
17 out to sea or whatever, they got to go
18 somewhere, okay.

19 Now, when you get north of the county line
20 and look at the western boundary, one --
21 another way to have done that western boundary
22 would have been city limits, right? In other
23 words, if we weren't comfortable with a
24 particular highway, we could have said, for
25 instance, the Boca Raton city limits could have

1 been used, or Delray or Boynton Beach. What
2 would that have done? Would that have pulled
3 the line closer to the -- there you go. So it
4 would have been a little more zigzaggy if we
5 would have used the city limits.

6 SENATOR GAETZ: Mr. Guthrie?

7 MR. GUTHRIE: That is correct, although
8 we -- not as a principal concern, but among the
9 considerations that we made while building
10 these districts was trying to follow city
11 boundaries where it made sense to do so. So,
12 for instance, the City of Plantation, we follow
13 that border between Plantation and Sunrise
14 exactly until we get to this little corner
15 right here. And you asked why did you cut that
16 corner out of that district. Well, if we go to
17 the value ramp, we will see that that area east
18 of the Turnpike has a tremendous concentration
19 of African-American residents, and so it just
20 made sense to include that entire area with the
21 City of Ft. Lauderdale and minority
22 communities.

23 SENATOR GAETZ: Senator Latvala.

24 SENATOR LATVALA: Just one or two more.

25 If -- so basically what you are saying there is

1 in Broward County, we use city limits pretty
2 extensively, except where there was a value
3 ramp -- an issue with the minority district of
4 a concentration of population, right?

5 SENATOR GAETZ: Mr. Guthrie.

6 MR. GUTHRIE: Well, or compactness
7 consider- -- I mean, it is a balancing, as we
8 have said before, of all the standards.

9 SENATOR LATVALA: But when we went to Palm
10 Beach County, we didn't use the city limits any
11 more. Is that -- you know, in looking at
12 improving this map, if I was looking to improve
13 this map in the amendatory process tomorrow,
14 then one of the things that conceivably could
15 do would be to follow the city limits a little
16 closer in Palm Beach County then, right?

17 MR. GUTHRIE: I am --

18 SENATOR LATVALA: And we haven't really
19 done that.

20 MR. GUTHRIE: My belief is that we did
21 follow city boundaries, where feasible, in Palm
22 Beach County. So the boundary here is tracing
23 the line between North Palm Beach and Lake
24 Park, we follow the boundary of Palm Beach
25 Gardens, we cut across on an arterial road

1 here --

2 SENATOR LATVALA: But in south county, we
3 didn't, right?

4 MR. GUTHRIE: Well, let's look at south
5 county. I believe that there, too -- the City
6 of Boynton Beach is entirely in District 32,
7 with the exception of these precincts that I
8 mentioned earlier were following the boundary
9 of Boynton Beach, the boundary of Manalapan,
10 the boundary of Ocean Ridge --

11 SENATOR LATVALA: Okay.

12 MR. GUTHRIE: -- through here. The areas
13 far out west are unincorporated, but all of the
14 Cities of Boca Raton, Golf, Delray Beach, Ocean
15 Ridge, Gulf Stream and Boynton Beach, with the
16 exception of that area I talked about, are in
17 District 32.

18 SENATOR LATVALA: One last question.

19 SENATOR GAETZ: Of course, sir.

20 SENATOR LATVALA: We are talking -- we've
21 heard a lot of conversation about bizarre
22 appendages today, and we do have one on this
23 map, and that is the extra finger that goes in
24 in north county there, and I didn't hear
25 Senator Sachs talking about that one, but that

1 is, you know, sort of -- kind of -- you know,
2 you got everything in the west, and then you
3 got one place where it goes in all the way to
4 the ocean. So was there any other way of doing
5 that district other than doing it that way?

6 SENATOR GAETZ: Mr. Guthrie.

7 MR. GUTHRIE: The answer to the question
8 was there any other way of doing that district
9 is yes.

10 The answer to why did we do it the way we
11 did is we created a District 29, including West
12 Palm Beach, Riviera Beach, the portion of
13 Boynton Beach that we talked about, and then --
14 so with that population -- then filling in
15 District 32, you have District 27, and in order
16 for it to get the population that it needs,
17 there's just that additional territory in the
18 north part of Palm Beach County. So it is --
19 it is -- it is -- I -- representation is so
20 important. I hate to refer to any area as not
21 being entirely intentional in terms of why it
22 was assigned to the district that it was, but
23 this particular area is, in fact, what was left
24 as we merged the changes that needed to be made
25 in south -- in Broward County and the other --

1 the remainder of Palm Beach County and make it
2 conform with the districts that the Supreme
3 Court had already determined to be valid.

4 Another slight change that we made as we
5 were about the business of addressing Broward
6 and Palm Beach Counties was that we extended
7 District 25 further south into Palm Beach
8 County. As a result of that, we were able to
9 address a concern that was raised by the
10 opponents in their briefs that the plan
11 initially submitted to the Supreme Court by the
12 Senate tended by a slight amount to
13 under-populate Republican districts and to
14 overpopulate Democratic districts. That was a
15 complaint that the opponents had expressed.
16 Well, by that little change, we actually
17 reversed that conclusion. So that change is a
18 part of this map as well.

19 SENATOR GAETZ: Leader Rich.

20 SENATOR RICH: Thank you, Mr. Chair.

21 I guess I am wondering, you know, why this
22 couldn't be squared off, because 29, correct me
23 if I am wrong, that is not a minority access
24 district, right? I mean, it has a num- -- you
25 know, a percentage, but it is not a minority

1 access district, is that right?

2 SENATOR GAETZ: Mr. Guthrie.

3 MR. GUTHRIE: Thank you, Mr. Chairman.

4 District 29 as it is constituted here is
5 25.7 percent black voting age population, 27.4
6 Hispanic voting age population. So it is a
7 combined majority-minority coalition district
8 with Hispanics and African-Americans.

9 SENATOR RICH: Uh-huh.

10 SENATOR GAETZ: Leader, did you wish to
11 follow up?

12 SENATOR RICH: Yeah. I am just wondering,
13 I mean, because it appears that there's, you
14 know, kind of a little -- it juts out somewhat
15 into 27 and it -- why would it not be possible
16 to -- you know, to just kind of shave that off
17 there and put that difference back into making
18 the rest of the district and Boca Raton whole?

19 SENATOR GAETZ: Mr. Guthrie.

20 MR. GUTHRIE: Boca. So is your issue
21 wanting to cut off the western portions of West
22 Palm Beach and have the district grow more
23 along the coast here, or you are trying to --

24 SENATOR GAETZ: Leader, could you be more
25 specific, ma'am?

1 MR. GUTHRIE: -- cut off the area west of
2 the Turnpike and fill in the area east of the
3 Turnpike here?

4 SENATOR RICH: Where you cut -- yes,
5 exactly --

6 MR. GUTHRIE: Okay. Well, let's look at
7 that. Let's turn on the value ramp and let's
8 see what we see. Excuse me. So the areas east
9 of the Turnpike and west of Boynton Beach are
10 -- have very, very low percentages of minority
11 voters. As we have discussed, they are pretty
12 densely populated. I can turn on -- turn on
13 the population numbers so that we can -- let's
14 see if I can remember how to do this. I
15 haven't done this -- there they are. So what
16 we are seeing -- the numbers that are appearing
17 on the map here are the numbers of persons per
18 voting tabulation district in this western part
19 of the district. So pretty densely populated
20 is what we see, and we also see that it is not
21 particularly heavy concentrations of Hispanics
22 or African-Americans, versus the area -- this
23 big, white space here is deceiving, because it
24 has no population. We have this little area
25 here with 596. The bulk of the population west

1 of the Turnpike that we are talking about here
2 is these VTDs in the Royal Palm Beach area, and
3 if you were to take those out of District 29 --
4 well, first of all, the numbers here are, you
5 know, something like what, 15,000 people,
6 whereas the number of people living in this
7 territory east of the Turnpike, I don't have it
8 exactly in my mind, but that looks like -- more
9 like thirty -- 35,000 people to me. So putting
10 that many people with that low a concentration
11 of minorities into a minority opportunity
12 district is going to fundamentally change, I
13 believe, the demographics of that entire
14 district.

15 SENATOR GAETZ: Leader Smith, you are
16 recognized.

17 SENATOR SMITH: Yes --

18 SENATOR GAETZ: I'm sorry, Leader Rich,
19 were you finished, ma'am?

20 SENATOR RICH: I'll let --

21 SENATOR GAETZ: Okay. Leader Smith.

22 SENATOR SMITH: A comment that was made
23 about 20 minutes ago and the answer to Senator
24 Latvala when he asked about the district, I
25 guess, was set up, 32, I guess the question

1 was, was there an opportunity to wholly put 32
2 in one county, and you stated that there was no
3 opportunity to make 32 in just one county, I am
4 a little concerned of that, because when you
5 looked at the old maps, I guess the two
6 districts, 34 and 32, ran with each other, but
7 you found a way to bring 34 into one county,
8 but you kept 32 into another county. Could you
9 revisit that answer again? Was there a way to
10 maybe bring 32 down and connect it to parts of
11 36 or something so that we can keep a district
12 keep along the county lines, or you found that
13 there was no way of making 32 into one county
14 like you did 34?

15 SENATOR GAETZ: Mr. Guthrie, and then
16 Senator Braynon, I apologize to you, sir, I
17 didn't see you back there, you are next.

18 MR. GUTHRIE: I don't recall that being my
19 exact answer to Senator Latvala. If that is
20 what I said, then I misspoke. Obviously, if
21 your goal was to start at the Palm
22 Beach/Broward County line along the coast and
23 to work south to fill out that district,
24 obviously that district could be completed in
25 Broward County. The reason I chose not to do

1 that is because I've got a short county
2 boundary, you know, a few miles to the east of
3 District 32, I've got a very long county
4 boundary to the west of District 34, and so by
5 following that boundary, making that the line
6 that we would not cross in getting to a point
7 where only one district crossed the
8 Broward/Palm Beach County line, we were able
9 to, to a much greater extent, follow the
10 direction of the Constitution that we utilize
11 geographic boundaries to the extent -- where
12 feasible. And so I could have chosen to start
13 on the east and work around either clockwise or
14 counter-clockwise. I chose to start on the
15 west and work around counter-clockwise, and
16 what you see is the result of that choice.

17 SENATOR GAETZ: Senator Braynon.

18 SENATOR BRAYNON: Thank you, Mr. Chair.

19 I know we were getting to this, but we
20 started talking about it before we got to it,
21 the functional analysis of District 29. We
22 called it a minority access seat, but I would
23 like Mr. Guthrie to kind of go through the same
24 exercise that we go and see if it actually
25 plays out that same way.

1 SENATOR GAETZ: Mr. Guthrie, could you
2 walk us through both the functional analysis
3 and the geometric analysis of the principally
4 affected districts there, please?

5 MR. GUTHRIE: Okay. So -- thank you, Mr.
6 Chairman.

7 For the functional analysis, Senator
8 Braynon, you are exactly correct that we do not
9 have a situation here with that district where
10 the minority voters, even if you look at black
11 and Hispanic voters together, constitute a
12 majority of the voters in the Democratic
13 primary. The numbers are 34.2 percent black.
14 The Hispanic voters in this area have very,
15 very low turnout and registration rates, so
16 even though Hispanics make up a quarter of the
17 population, they are only 3.7 percent of the
18 voters in the Democratic primary. We see that
19 black voters, as elsewhere, are overwhelmingly
20 Democratic, and we see that this District 29
21 will perform for the Democratic nominee in
22 general elections consistently. So those are
23 the relevant factors to consider in the -- in
24 the functional analysis.

25 This is something of an opportunity

1 district because it was coming from an area
2 which had a long-standing association with a
3 Senator. For 20 years we have had a district
4 that has gone from Broward -- or Ft. Lauderdale
5 to West Palm Beach. We saw an opportunity to
6 get a majority coalition district and chose to
7 take that opportunity. I think we did so in a
8 way that is faithful to all the other standards
9 of the Constitution relating to compactness and
10 following political and geographic boundaries
11 where feasible.

12 As the Chairman suggested, let's take a
13 look at the compactness scores for the proposed
14 District 29. The convex hull is .89, the Reock
15 ratio is .54, and the Polsby-Popper perimeter
16 ratio is .50. Those are
17 shooting-the-lights-out kind of compactness
18 scores.

19 SENATOR DIAZ DE LA PORTILLA: Question on
20 that.

21 SENATOR GAETZ: Senator Diaz de la
22 Portilla.

23 SENATOR BRAYNON: I had one more
24 follow-up.

25 SENATOR GAETZ: I apologize, Senator

1 Braynon. Please follow up.

2 SENATOR BRAYNON: It is only -- I know
3 that earlier, I think it was Senator -- Leader
4 Rich that was making a point, and the answer --
5 in one of the answers of her point was, well,
6 this is a minority access district, so we
7 probably can't do something. So does that
8 change the answer now that we have established
9 that this doesn't actually constitutionally
10 perform like a minority access district?

11 SENATOR GAETZ: I don't remember what it
12 was we --

13 SENATOR BRAYNON: Yeah, I don't remember
14 what the answer was, but I heard it said, and I
15 knew --

16 SENATOR GAETZ: Leader Rich, did you want
17 to maybe revisit this topic before we go to
18 Senator Diaz de la Portilla?

19 SENATOR RICH: Thank you, Mr. Chairman.

20 That was the question I had originally,
21 and Senator Braynon is just basically
22 reiterating why we couldn't make that change
23 because we are not dealing with the minority
24 access district.

25 SENATOR GAETZ: Okay. Senator Braynon,

1 are you finished, sir? Okay.

2 SENATOR SACHS: May I?

3 SENATOR GAETZ: Would you yield to Senator
4 Sachs just for a moment?

5 Senator Sachs, go ahead, please.

6 SENATOR SACHS: Thank you, and I think I
7 can -- I can help out.

8 What the question was before, Mr. Guthrie,
9 is if you look at 27 and you look at 29 and you
10 look at 32, and I think the question was, you
11 see how irregular, and as the Court said,
12 bizarre the configuration is in 29 and 32, and
13 I think the question was, is there any reason
14 why we can't draw a line from the top of 29 --
15 it goes and follows along so that it is
16 straight, so that we have a boundary that
17 either follows along the Turnpike or 441, we
18 have a number of roads there, that would
19 make -- would even that area out to the west.
20 And I think your answer was originally, and
21 correct me if I am wrong, that it could be done
22 if the numbers are there, and I think that is
23 -- is that correct, sir?

24 SENATOR GAETZ: And just so we level the
25 predicate or the question, Senator Sachs, you

1 are not suggesting, are you, and if you are,
2 that is fine, that 32 and 29 are somehow
3 bizarrely shaped now?

4 SENATOR SACHS: Bizarre, that is bizarre.

5 SENATOR GAETZ: Bizarre? Are you
6 suggesting that?

7 SENATOR SACHS: No, I am not.

8 SENATOR GAETZ: Okay.

9 SENATOR SACHS: I am saying though --
10 however, let me say this: We are looking at --
11 according to the Supreme Court, we are looking
12 at trying to make geographic boundaries as much
13 as possible, except those that impede upon
14 those areas that are minority. And I think the
15 line of questions has been up to now that 29
16 may not necessarily be that type of district.
17 So we go back to Leader Rich's question, which
18 is is there any reason why we can't make
19 straight those lines that go between those
20 three districts, and that is the question, Mr.
21 Guthrie.

22 SENATOR GAETZ: Mr. Guthrie, do you want
23 to take a stab at that?

24 MR. GUTHRIE: Well, let's -- let's go,
25 again, to the northern border of District 29.

1 I think that is one of the areas we're asking
2 about, and let's look at the city boundaries,
3 and what we see is that the district boundary
4 is following the city boundaries -- see,
5 straight -- straight through here until we get
6 to West Palm where -- and I honestly don't know
7 the answer of why this corner was omitted from
8 -- well, but we would have had 3,100 people in
9 this next track, so I -- I believe we did
10 follow city boundaries through this area, and
11 that is the dominant explanation of why it is
12 not a straight line.

13 On the south, I already explained that
14 because what we had here was a district of
15 residents who historically in West Palm Beach
16 and Riviera Beach had had an opportunity to
17 elect a candidate of their own choice, working
18 together with voters in Ft. Lauderdale, that
19 because that extended down through Boynton
20 Beach and because the district, just by drawing
21 a straight line, was going to be within, you
22 know, a stone's throw or two of these precincts
23 that also historically were part of that same
24 minority-majority district, I made a choice to
25 include those precincts. I don't think that

1 what I created here was a bizarre appendage. I
2 think it was a reasonable following of
3 political and geographic features to arrive at
4 a result.

5 SENATOR GAETZ: Turn on the value ramp
6 again, please, for that area, just so that we
7 can -- we can all get reminded. There we go.

8 All right. Senator Diaz de la Portilla.

9 SENATOR DIAZ DE LA PORTILLA: Thank you,
10 Mr. Chairman.

11 I just wanted to make sure that -- because
12 the numbers have changed here of districts and
13 all that. The compactness mathematical
14 measures that you gave for 29 are the new ones
15 under the PCB that is being considered today,
16 correct?

17 MR. GUTHRIE: That is correct.

18 SENATOR DIAZ DE LA PORTILLA: And so what
19 was that under what we -- under 1176 that we
20 passed out of here, what were those numbers and
21 was it still District -- it wasn't 29, it was
22 some other number back then.

23 MR. GUTHRIE: Well, District twenty -- as
24 the Court directed, the -- they said that
25 District 29 in the plan that passed the

1 Legislature was an issue, and so District 29 in
2 this proposal is split among four other Senate
3 districts, two primarily, District 32 and
4 District 29, but also portions of District 27
5 and 25 are part of -- and maybe 36, I would
6 need to check on 36, whether extended below the
7 Port Everglades. The -- I lost my train of
8 thought there. So what do we want to compare
9 it to, the old 34, the old 29?

10 SENATOR GAETZ: I think -- correct me if I
11 am wrong, Senator Diaz de la Portilla. I think
12 what the Senator is asking is, is there a
13 comparison on the geometric compactness
14 standards from the plan which passed the Senate
15 and the plan which is now before us. Is that
16 correct, sir?

17 SENATOR DIAZ DE LA PORTILLA: That is
18 exactly correct, Mr. Chairman.

19 MR. GUTHRIE: Okay. So if we look at
20 District 29 to District 29, so flipping back to
21 the slides, District 29 in the configuration
22 that originally passed the Senate went from
23 Jupiter to the -- to Port Everglades, okay. We
24 have substantially modified that District 29.
25 Now, the question is, what do you want to say

1 is its comparable? Do you say it is 29 or do
2 you say it is 32? I can --

3 SENATOR GAETZ: Let's do both.

4 MR. GUTHRIE: Okay.

5 SENATOR DIAZ DE LA PORTILLA: And on that
6 point, just to fine tune it a little bit, okay,
7 so the old 29, for lack of a better term, was a
8 lot less compact than the new 29 in the PCB,
9 but it seems that the new 32 is just as, if
10 there is such a word -- well, I guess
11 non-compact as the old 29. Do you follow what
12 I am saying? That the new 32 seems to be as
13 long and narrow and therefore non-compact as
14 the old 29 that we were trying to fix. So the
15 question is, okay, so 29 is now more compact
16 and you have the mathematics and mathematical
17 measures for that, but is 32 now less compact
18 than what it was before?

19 SENATOR GAETZ: While Mr. Guthrie is
20 gathering his numbers, the naked eye would
21 suggest that the new 32 is wider and also
22 shorter than the old 29.

23 SENATOR DIAZ DE LA PORTILLA: But,
24 Mr. Chairman, if I may, but visually, using the
25 visual test that -- the Supreme Court seems to

1 give you a visual test, and then they look at
2 the mathematics to see if the numbers support
3 what you think you're seeing.

4 SENATOR GAETZ: Right.

5 SENATOR DIAZ DE LA PORTILLA: It still
6 looks.

7 SENATOR GAETZ: Yeah, I just gave you the
8 visual test, and Mr. Guthrie is about ready to
9 give you the numbers.

10 MR. GUTHRIE: If we get out our measuring
11 stick and measure the old 29, we see that it is
12 59 miles from end to end, and it -- the new 29
13 is 23 miles from end to end, the new 32 is 33
14 miles from end to end. So if you add the two
15 together, you come -- you are still less than
16 the total end-to-end distance of the old 29.
17 Those two districts together are less --

18 SENATOR DIAZ DE LA PORTILLA: I'm sorry,
19 Mr. Chairman --

20 SENATOR GAETZ: One more time, yes, sir.

21 SENATOR DIAZ DE LA PORTILLA: You said the
22 old 29 was 59 miles --

23 MR. GUTHRIE: That is correct.

24 SENATOR DIAZ DE LA PORTILLA: -- and the
25 new 29 is 23 and the new 32 is 33, so when you

1 add those, that is 62, which is more than 59.

2 MR. GUTHRIE: I think 23 and 33 is 56.

3 SENATOR DIAZ DE LA PORTILLA: No, sir.

4 No, you said 29 and 33 -- or 23 and -- okay, it
5 is 23 and -- it is 56, it is three miles
6 shorter. Yeah, yeah.

7 SENATOR GAETZ: Okay. Senator Benacquisto
8 and then Senator Latvala, and we are on Senator
9 Diaz de la Portilla's amendment time now, we
10 are parking on his time, so Senator
11 Benacquisto.

12 SENATOR BENACQUISTO: Thank you,
13 Mr. Chairman.

14 Mr. Guthrie, could you go back to District
15 29? Much comment has been made about the
16 northwest portion of that district and why it
17 couldn't have been lopped off at the west and
18 placed on the top of a newly redrawn 29. And
19 having spent a couple of years over there, much
20 of that western portion is a water catchment
21 area, there aren't really that many people, and
22 the only other area you could pick up is the
23 community of Ibis, which is just outside the
24 black line on the west of the district. I
25 don't suppose they would like to be placed in

1 that district at the far end of a water
2 catchment area and not with the population base
3 of 27. So I'm not really sure that is a
4 feasible alternative, but could you speak to
5 that --

6 MR. GUTHRIE: You said that we are using
7 --

8 SENATOR BENACQUISTO: -- of taking that --
9 what looks like it would be a large population
10 base, but which is really only a water
11 catchment area e- -- sorry, west of the
12 Turnpike there?

13 MR. GUTHRIE: Right. As we zoom in, we
14 see exactly what Senator Benacquisto is talking
15 about. We can flip through Google maps and --
16 and there you go, water catchment area, not
17 very heavily populated.

18 SENATOR GAETZ: Okay. Senator Latvala,
19 you are recognized.

20 SENATOR LATVALA: Thank you, Mr. Chairman.

21 I am pretty weary of the conversation
22 about how long District 29 is or 32 is or
23 whatever. I am wondering if we could ask Mr.
24 Guthrie, how long is District 25, which is the
25 one right above it, that was passed on by the

1 Supreme Court?

2 MR. GUTHRIE: The end-to-end distance of
3 District 25 in the new proposal is 65 miles.
4 In the plan that the Supreme Court viewed
5 previously, it was 69 miles.

6 SENATOR LATVALA: Mr. Chairman, you know,
7 I haven't heard a question asked about that
8 from anybody of either party, of anybody in the
9 Senate ask about that district, which is a long
10 and skinny district, and no one objected to it,
11 no one complained about it in the Supreme
12 Court, and I am not complaining about it
13 either, but I am wondering why we have a double
14 standard with regard to that district and the
15 districts just south of it.

16 SENATOR SMITH: Mr. Chair?

17 SENATOR GAETZ: Well, sometimes selective
18 indignation is the order of the day, but
19 everyone is entitled to ask their questions.

20 And Senator Storms was next, and then we
21 will go to you, Leader. Senator Storms. And I
22 would just -- just so that we -- you manage
23 your own time, you control your own destiny.
24 We will be out of here at six o'clock, so you
25 can decide how much you would like to get done

1 today and how much you would like to get done
2 tomorrow. We still have three amendments
3 pending. Senator Storms.

4 SENATOR STORMS: Thank you, Mr. Chair.

5 I wanted to ask the question, I wanted to
6 explore the issue of the minority access seat,
7 because as I understand -- I haven't previously
8 understood that we had to pick a particular
9 minority to be anointed the minority access
10 seat. It seems to me that your new 29 could
11 be -- with a coalition could be -- if I am
12 looking at the numbers properly, that you could
13 have a minority access seat that is an
14 opportunity seat if there is a coalition there,
15 and I don't see why that can't be considered a
16 minority access seat. I am assuming that we
17 would agree that there are African-American
18 Hispanics who might vote with the
19 African-American candidate, and there may be --
20 and there may be African-Americans who are not
21 Hispanics that would vote for an Hispanic
22 Democrat just as easily, but the result would
23 be the same, which would be a minority access
24 seat. So could you please address that?

25 SENATOR GAETZ: Mr. Guthrie.

1 SENATOR STORMS: Or perhaps it is a
2 counsel question.

3 SENATOR GAETZ: Well, anybody who would
4 like to take a whack at it. Mr. Guthrie, would
5 you like to comment on that statement?

6 MR. GUTHRIE: Thank you, Mr. Chairman.

7 I think I have already explained that
8 because this is an area that has a 20-year
9 tradition of being part of a minority-majority
10 district, because it has had representation in
11 the State House of Representatives with Mack
12 Bernard, in the State Senate with Chris Smith,
13 in the United States Congress with Alcee
14 Hastings, I think that there is a possibility
15 similar to what the Martinez -- the Federal
16 District Court ten years ago found, that a
17 viable candidate will come forward and provide
18 the minority voters in that area an opportunity
19 to elect a candidate of their choosing.

20 SENATOR GAETZ: Leader Smith.

21 SENATOR SMITH: Just briefly, the reason
22 we are asking questions about the length of
23 those two lower districts is because the
24 Supreme Court brought up length of those lower
25 districts. It wasn't bias or anything towards

1 25. The Supreme Court mentioned those two, and
2 mentioned it specifically, and that is why we
3 asked questions about length of those last two.

4 SENATOR GAETZ: And questions about any of
5 these districts are entirely in order.

6 Senator Diaz de la Portilla, we are on
7 your amendment time, but you go ahead.

8 SENATOR DIAZ DE LA PORTILLA: Yeah, well,
9 and that was the point actually that I was
10 going to make, but just to fine tune it, it is
11 not selective indignation, it is a matter of
12 responding to what the Supreme Court raised in
13 its opinion, and they did specifically talk
14 about the lack of compactness or
15 non-compactness of District 29, and that is why
16 Senator Latvala were discussing it in detail.

17 SENATOR GAETZ: Yeah, and Senator Latvala
18 made excellent observations with which I agree.

19 Anything else on this until we move on?

20 SENATOR STORMS: Mr. Chair?

21 SENATOR GAETZ: Yes, Senator Storms. And,
22 Senator Detert, did you wish recognition?

23 SENATOR DETERT: I was just helping
24 Senator Storms.

25 SENATOR GAETZ: Helping Senator Storms.

1 Senator Storms.

2 SENATOR STORMS: Well, and the reason -- I
3 understand that you explained it that way, Mr.
4 Guthrie, but it seems like some of the -- some
5 of my colleagues on the Committee were saying
6 that it would not be a functioning minority
7 access seat, and I am trying to understand the
8 rationale. If you look strictly at the numbers
9 and voter turnout, not even voting age
10 population, but you look at voter turnout, you
11 have a dominant minority seat, although it is a
12 coalition, it is not strictly an
13 African-American seat and it is not strictly an
14 Hispanic seat. And so, I mean, I just wanted
15 to know from a legal perspective what is the
16 response back other than, well, I think it will
17 stand. I mean, is it -- is there any history
18 and case law anywhere that talks about -- that
19 talks about this as being a bona fide minority
20 access seat other than the Martinez
21 confabulation?

22 SENATOR GAETZ: Mr. Bardos.

23 MR. BARDOS: It is quite possible that
24 this district will not perform. I think the
25 intention was to give minorities an opportunity

1 there to mobilize and to elect a candidate of
2 their choice.

3 I think it is also important to keep in
4 mind that the Tier 1 minority protections are
5 not the sole justification for the district
6 that was drawn. So it is quite squarish in
7 shape. Where the boundaries are jagged, it is
8 because they follow city boundaries. District
9 29 could certainly have been taken to the north
10 to meet District 25, but then both District 32
11 and 29 likely would have become much more
12 narrow. So those were the choices that were
13 made, and this is one that we thought achieves
14 all of the constitutional objectives in the
15 best possible way.

16 SENATOR GAETZ: Thank you. Senator Sachs
17 for the benediction.

18 SENATOR SACHS: You don't want a
19 benediction from me.

20 SENATOR GAETZ: On this part, on this
21 part.

22 SENATOR SACHS: That's all right. I do
23 have a question.

24 SENATOR GAETZ: Senator Diaz de la
25 Portilla is anxious on his amendment.

1 SENATOR SACHS: The question is that, in
2 fact, if the lines that were drawn, 25, 29, 27,
3 32, were not done -- and I am asking Mr. Bardos
4 a legal question -- if they were not drawn
5 because of necessarily a minority access seat,
6 but they were drawn because of a decision to
7 follow some city boundaries, some other
8 boundaries, but there was no constitutional
9 mandate on a Tier 1 issue to draw those lines
10 pursuant to that, is that correct, Mr. Bardos?

11 SENATOR GAETZ: Mr. Bardos.

12 MR. BARDOS: I think that -- that depends
13 on your assessment of whether 29 is a
14 functioning coalition district. I think that
15 is arguable. I think that this is the
16 arrangement that we thought satisfied all of
17 the constitutional standards.

18 SENATOR GAETZ: And also, Senator Sachs,
19 we may want to go back, it is always helpful to
20 go back to public testimony. I believe there
21 was a young gentleman who testified many times
22 before this Committee who argued for a minority
23 opportunity district in exactly this location.
24 I think he may be somewhat familiar to members
25 of the Committee.

1 SENATOR SACHS: I'm sorry, Mr. Chairman, I
2 don't know who that is, but --

3 SENATOR GAETZ: I can't remember his name,
4 but we can get it for you. I think he --

5 SENATOR SACHS: No, it's all right. I
6 just wanted to know if there was any Tier 1
7 constitutional issue that was followed in
8 making these boundaries, and I have the answer
9 and I appreciate it. Thank you very much.

10 SENATOR GAETZ: His name is Ryan Terrell,
11 I believe.

12 And now we will turn to the amendatory
13 process unless there are any other comments.
14 Ah, Senator Gibson.

15 SENATOR GIBSON: Thank you, Mr. Chairman.

16 I was trying to make sure I follow along
17 looking at all my charts and numbers. So on
18 29, is -- 29 is redrawn because 34 had to be
19 redrawn? Or 29, 32 and 34 are all impacted
20 because of 34. Is that why we find ourselves
21 with these configurations? And 34 was a
22 minority-majority district, or is or was?

23 SENATOR GAETZ: Mr. Guthrie, please.

24 MR. GUTHRIE: Thank you, Mr. Chairman.

25 The Court invalidated 34 and 29 and

1 directed the Senate to come up with a -- so on
2 this plan, the Court invalidated 34 and 29 and
3 directed this Legislature to come up with a
4 remedy conforming to the judgment of the Court.

5 SENATOR GIBSON: Can I have a follow-up?

6 SENATOR GAETZ: Of course you may.

7 SENATOR GIBSON: And so what was the
8 distance -- because I understand the Court
9 talks about bizarre shape, but can something be
10 bizarre and still meet the compactness test?

11 SENATOR GAETZ: Mr. Guthrie --

12 MR. GUTHRIE: I believe the direction the
13 Court has given us, subject to legal counsel's
14 correction, is that Tier 1 trumps Tier 2, but
15 it doesn't trump it to such an extent that you
16 can ignore Tier 2. So, in Jacksonville, even
17 though there was a clear Tier 1 issue with that
18 minority opportunity district, the Court said,
19 "Nevertheless, you need to be mindful of
20 compactness, because you can accommodate both
21 your Tier 1 desire of providing opportunities
22 for minority voters and have a district that is
23 more compact without jeopardizing the ability
24 of minorities to elect candidates of their own
25 choosing."

1 SENATOR GAETZ: Any other comments? Yes,
2 Senator Gibson.

3 SENATOR GIBSON: And that -- that is
4 debatable, but in this particular instance,
5 what you say is applicable to 34 in the new
6 configuration, because there is -- there is no
7 impact to 34, it is only to 29 and 32, which
8 were never access districts to begin with?

9 MR. GUTHRIE: Well, 29 -- excuse me.

10 SENATOR GAETZ: Of course, Mr. Guthrie.

11 MR. GUTHRIE: Twenty-nine included 180,000
12 people out of Palm Beach County, most of them
13 in West Palm, Riviera and then it extended some
14 areas going south in Boynton a bit, in Delray.

15 SENATOR GIBSON: And my last question --

16 SENATOR GAETZ: Yes, ma'am.

17 SENATOR GIBSON: Thank you, Mr. Chair.

18 What is the distance between the top of
19 the district and the bottom in this
20 configuration?

21 MR. GUTHRIE: Of District 34?

22 SENATOR GIBSON: Yes.

23 MR. GUTHRIE: Top to bottom is 52 miles.

24 SENATOR GAETZ: And what was the top to
25 bottom in old 34?

1 MR. GUTHRIE: In the benchmark District
2 34 --

3 SENATOR GAETZ: Not the benchmark, but in
4 the plan that passed the Senate.

5 MR. GUTHRIE: That is 52 miles.

6 SENATOR GAETZ: Okay. And in the -- and
7 then in the benchmark?

8 MR. GUTHRIE: It was 49 miles.

9 SENATOR GAETZ: And in the plan that is
10 now before us?

11 MR. GUTHRIE: Top to bottom is 17 miles.

12 SENATOR GAETZ: Thank you. Leader.

13 SENATOR SMITH: When you say benchmark, do
14 you mean the previous district?

15 SENATOR GAETZ: The districts that we're
16 under right now, sir.

17 SENATOR SMITH: Are you sure that forty --
18 you said forty something miles, because the
19 current district, I believe, is currently in
20 the 50s already? Current District 29.

21 SENATOR GAETZ: I think, Leader, that the
22 numbers may have changed, but Mr. Guthrie, can
23 you --

24 MR. GUTHRIE: The current District 29
25 represented by Senator Smith, of course, is

1 according to these calculations, which are as
2 the crow flies, from the point -- the two
3 points of that district that are most distant
4 from one another is 49 miles rounded off to the
5 nearest mile.

6 SENATOR GAETZ: All right. Any other
7 comments at this point or questions about what
8 we are looking at on the big screen?

9 If not, we will turn to the amendatory
10 process. Senator Diaz de la Portilla has an
11 amendment. It is bar code 656326, and that is,
12 for your reference, Plan S036S9020. And,
13 Senator, you are recognized on your amendment.

14 SENATOR DIAZ DE LA PORTILLA: Mr.
15 Chairman, before we do that, I just want to
16 inquire, because we haven't even finished going
17 over the entire map as proposed in the PCB, and
18 so I think that to engage in the amendatory
19 process before we do that would not allow us to
20 have the amendments in the proper posture to be
21 considered against the PCB, which is what --
22 you know, what we have to consider. And since
23 we have an additional day that the President
24 has so generously given us tomorrow starting at
25 8:00, would it not be better to finish doing

1 what we have been doing in terms of reviewing
2 the map and then take up the amendments at that
3 junction so that they are in the proper context
4 and posture?

5 SENATOR GAETZ: Well, Senator, I believe
6 that we have concluded the presentation on the
7 PCB, and the amendments are in order. If you
8 wish not to present your amendment now and you
9 would like to not present it until tomorrow, if
10 we meet tomorrow, that is your privilege. Your
11 amendment is now before us if you would like to
12 present it. If you wouldn't, that is fine.

13 SENATOR DIAZ DE LA PORTILLA: If I may, my
14 question is, we haven't gone over the PCB as it
15 treats the districts in the rest of the state
16 of Florida. I think we stopped at 29 or 32.

17 SENATOR GAETZ: Mr. Guthrie, is there any
18 other part of the presentation that we have
19 missed?

20 MR. GUTHRIE: What was left is the City of
21 Lakeland, which we had jumped forward to
22 previously --

23 SENATOR GAETZ: Yes.

24 MR. GUTHRIE: -- and then some summary
25 findings about the overall number of city

1 splits and compactness scores.

2 SENATOR GAETZ: Well, why don't you make
3 your summary comments, and I appreciate Senator
4 Diaz de la Portilla granting you time to do
5 that. Please go ahead.

6 A VOICE: Mr. Chair?

7 SENATOR GAETZ: Just a moment.

8 Yes, ma'am, for what purpose?

9 SENATOR GIBSON: For a question.

10 SENATOR GAETZ: A question about the plans
11 or about procedure?

12 SENATOR GIBSON: I think I would question
13 as it relates to some questions that I asked
14 early so I can ask you procedurally how we are
15 going to proceed so that I can see how the
16 answers would fit in --

17 SENATOR GAETZ: Sure.

18 SENATOR GIBSON: -- to us proceeding.

19 SENATOR GAETZ: Well, let me tell you how
20 we have forecasted when we started this
21 morning.

22 SENATOR GIBSON: Okay.

23 SENATOR GAETZ: And then if the Committee
24 has a different direction they would like to
25 proceed, we can always take a detour.

1 We have now finished describing the PCB,
2 other than any summary comments that Mr.
3 Guthrie chooses to make. We have had extensive
4 questions for now seven hours. We are now
5 going to go into the amendatory process and
6 take up the pending amendments, and we are
7 going to deal with them one by one, we are
8 going to vote them up or down, and then we will
9 have the plan before us as amended and we will
10 then consider that plan and we will take as
11 much time as you would like. If we run out of
12 time today, we will meet tomorrow morning at
13 eight o'clock.

14 SENATOR GIBSON: May I have a follow-up?

15 SENATOR GAETZ: Of course.

16 SENATOR GIBSON: Thank you, Mr. Chair.

17 And I am asking because I believe that in terms
18 of looking at the maps and the numbers in the
19 best possible manner, the questions that I
20 asked earlier about how many people are
21 represented in a percentage point and where is
22 crossover considered in the Court's ruling
23 opinion and how that relates to minority voter
24 protection, and I am only asking because I
25 would like to be able to use this information

1 to help me determine whether or not I support
2 what we are doing.

3 SENATOR GAETZ: That is a fair question,
4 and you really had two questions. One was
5 references to crossover in the opinion, and the
6 second was what does a percentage point mean in
7 terms of numbers of voters or people in a
8 particular election. And let me try again to
9 answer the second part.

10 It depends on what election. If you will
11 tell us the election that you would like us to
12 do the math on, we will try to do it, but in
13 every election, there is a different number of
14 people voting, so one percent of the electorate
15 is not the same number in every election, if I
16 am making myself clear. So if you will tell us
17 the election that you are questioning, we will
18 try to do the math and let you know what one
19 percent of the voters were in that election.

20 But, Ms. Tunnickliff, did you have the
21 opportunity to review the opinion as to the
22 notion of crossover, what it means, where it is
23 applied?

24 MS. TUNNICLIFF: "Crossover" is defined in
25 the opinion on page 57, and it says that a

1 crossover or coalition district, and we've used
2 the term "coalition" here today as well, is
3 "one which minority voters make up less than a
4 majority of the voting age population, but are
5 at least potentially large enough to elect the
6 candidate of their choice with help from voters
7 who are members of the majority and who cross
8 over to support minority preferred candidates."
9 So that is the definition --

10 SENATOR GAETZ: May we have order, please?
11 Senator Gibson has asked an important question,
12 a question that is important to her, it may be
13 important to a lot of us, and we are getting an
14 answer.

15 Would you start your answer again, please?

16 MS. TUNNICLIFF: The term "crossover" or
17 "coalition district," and we've used "coalition
18 district" here today as well, is defined in the
19 opinion on page 57 as "one in which the
20 minority voters make up less than a majority of
21 the voting age population, but are at least
22 potentially large enough to elect a candidate
23 of their choice with help from voters who are
24 members of the majority and who cross over to
25 support the minority's preferred candidate."

1 That is the definition. I do not see where
2 that is referred to with regard to any Senate
3 district, however, in the rest of the opinion.
4 And I'll defer to Mr. Bardos, but I do not
5 think --

6 SENATOR GAETZ: Stay at the podium. I
7 have a feeling Senator Gibson has a follow-up.

8 SENATOR GIBSON: Thank you, Mr. Chair.

9 Only that crossover was mentioned earlier
10 in our conversations as if crossover allowed, I
11 guess, a minority -- the minority voters to
12 elect a candidate of their choice, but they are
13 dependent upon a crossover vote to get it done.
14 And so that doesn't factor into any of our
15 numbers here, does it?

16 SENATOR GAETZ: Mr. Guthrie, are we
17 presuming when we -- when we describe
18 minorities and we describe minority opportunity
19 or minority-majority districts, are we making
20 any assumptions about non-minorities crossing
21 over and voting for minority candidates in the
22 presentation of any of the numbers used today?

23 MR. GUTHRIE: The analysis that was
24 prescribed by the Court as -- and is using the
25 definition of "crossover" that Ms. Tunnickliff

1 just mentioned to us, yes --

2 SENATOR GAETZ: Okay.

3 MR. GUTHRIE: -- that -- so you do not
4 necessarily need to find that African-Americans
5 constitute a majority of the voters in a
6 district in order for that district to be a
7 performing district for African-Americans or
8 for Hispanic communities.

9 SENATOR GAETZ: All right. I'm sorry,
10 Senator Gibson, one more time.

11 SENATOR GIBSON: Thank you, Mr. Chairman,
12 and on the issue of the percentage to people,
13 and I thought we had come to some consensus, if
14 you will, that we had some numbers that could
15 reflect that without going election by
16 election, and so, anyway, even just looking at
17 the functional analysis sheets that we had
18 earlier, for example, using District 6,
19 formerly District 1, wherein as we sit today,
20 the 2002 sheet, it -- the combination of
21 minorities is 53 -- 53 percent. In the map
22 that was invalidated by the Court, the
23 combination of minorities is 53.6 percent, and
24 in the proposed committee substitute, the
25 combination of minorities is 49.4 percent. So

1 I am wondering, even if we just used those --
2 these three sets of numbers, what is the
3 potential difference in the number of voters at
4 49 percent, at 53.6 percent and at 53 percent?

5 SENATOR GAETZ: Mr. Guthrie --

6 SENATOR GIBSON: And --

7 SENATOR GAETZ: I'm sorry, go ahead,
8 ma'am.

9 SENATOR GIBSON: The other half of that --
10 I'm sorry, and I will be done -- is when you
11 are considering minority diminution, is it a
12 single race that you are looking at that has to
13 be above the 50 percent threshold, or is it a
14 combination? Is that what you call coalition,
15 where you have more than one minority
16 represented in an area? How does -- how does
17 that play into all of this? And thank you very
18 much.

19 SENATOR GAETZ: Of course. Mr. Guthrie.

20 MR. GUTHRIE: Let me answer the second
21 question first. A coalition is a combination
22 of people who maybe are from different racial
23 or ethnic backgrounds who vote cohesively in
24 order to elect the candidate that is preferred
25 by those two groups in combination. So in

1 downtown Miami, you would not have a coalition
2 of African-American and Latino voters, but in
3 south Miami, you might, and in areas of central
4 Florida, you might. So that is coalition.

5 The question about numbers of people and
6 percentages and why does the functional
7 analysis use percentages rather than numbers,
8 the answer there is that the numbers of people
9 that we have were determined by the United
10 States Census, and all people, men, women,
11 children, are entitled to representation based
12 on their numbers in the United States Census.
13 The functional analysis, like the Court did,
14 uses percentages because the key factor for
15 determining success or failure in an electoral
16 contest is whether you've got a majority of the
17 vote or not. So that is why they simplify the
18 presentation to just percentages of the vote or
19 turnout or whatever the factor is.

20 SENATOR GAETZ: Other than going to a
21 particular election, that is about the best
22 answer I think we can provide right now,
23 Senator Gibson.

24 SENATOR BRAYNON: Mr. Chair?

25 SENATOR GAETZ: Sure. Senator Sachs and

1 then somebody else, Senator Braynon. Senator
2 Sachs, then Senator Braynon.

3 SENATOR SACHS: Okay. Thank you. I just
4 didn't want to interrupt anything, but the
5 questioning that we have been going through for
6 the last few minutes with Senator Gibson brings
7 up a question that we have -- that is
8 correlated with that, and that is going down
9 all the way down to District 40, is that also
10 a -- and I am looking at, you know, our plan
11 that we have for today, our PCS -- is that also
12 a minority access seat as well, Mr. Guthrie?

13 MR. GUTHRIE: District 40 is a minority
14 access district that is protected by Section 5
15 of the Voting Rights Act, yes.

16 SENATOR GAETZ: Senator Braynon.

17 SENATOR BRAYNON: Thank you, Mr. Chair.

18 There are a few things that I didn't
19 mention, I see we are getting to the end, so
20 since we are doing this now, with respect to
21 retrogression, I know we said that we didn't
22 have a bright line for it, but from what we did
23 with District 34 and how it performs -- well,
24 let's just go with VAPs for right now, or we
25 can go with how it performs, but what it was in

1 our old map and what it is now I think is
2 probably about five or so points below what it
3 did, and then I went back into the opinion and
4 I looked at what they said about District now
5 33, in our maps, 38, and about it -- it is the
6 map that the League of Women Voters gave, they
7 said that it was -- wrote -- it had
8 retrogression and it had numbers about -- I
9 would say closer to eight or nine percentage
10 points lower than what we have. So it sounds
11 like they kind of -- they said what was wrong
12 and they said what -- and we are saying that
13 four or five is not enough, is -- doesn't
14 constitute retrogression, but they said that
15 eight or nine does. So does that kind of give
16 us somewhat of a scope of where retrogression
17 is?

18 SENATOR GAETZ: Mr. Guthrie, and then we
19 will ask Mr. Bardos since we are, I think,
20 bordering on a legal question here. Or, Mr.
21 Bardos, do you want to take a shot at that?

22 MR. BARDOS: I think that does give us
23 some guidance. I think also in that instance
24 in the Senate District 38 and in Senate Joint
25 Resolution 1176, which the League of Women

1 Voters had drawn in to I believe it was a forty
2 -- maybe 48 percent district, it had fallen
3 beneath the majority-minority threshold, and
4 the Court had placed some emphasis on that, and
5 that differentiates that from the situation of
6 Senate District 34 where we remain above that
7 threshold.

8 SENATOR BRAYNON: Mr. Chair?

9 SENATOR GAETZ: Yes.

10 SENATOR BRAYNON: Mr. Bardos, the Hispanic
11 population in that district in the League of
12 Women Voters was almost 31 or -- it was thirty
13 something percent. So if you add that with the
14 African-American population, wouldn't that be
15 above the minority?

16 MR. BARDOS: Certainly if we add it, it
17 would be. The Court -- I will go find again
18 the reference to it in the Court, and I can
19 share that -- in the Court's opinion, and I can
20 share that with you. My recollection, though,
21 is that the Court found significant the fact
22 that the black age population of that district
23 had been reduced to the point to which it had
24 been reduced.

25 SENATOR GAETZ: Senator Dean.

1 SENATOR BRAYNON: I had one more question,
2 but --

3 SENATOR GAETZ: All right, one more.

4 SENATOR BRAYNON: Last one, and it is
5 really about -- and I wanted to ask Mr. Guthrie
6 if he could finish -- cover it in the closing,
7 which was Senator Margolis had mentioned about
8 the functional analysis of the seats in Dade
9 County, she wanted that to be done or to be
10 talked about, so I don't know if he could maybe
11 cover that a little bit, if it is what -- I
12 just remember her asking that, so -- unless
13 she's changed her mind.

14 SENATOR GAETZ: And I believe that when we
15 get in, if we ever do, to Senator Diaz de la
16 Portilla's amendment, that will be at the heart
17 of that conversation.

18 Senator Dean.

19 SENATOR DEAN: Mr. Chairman?

20 SENATOR GAETZ: Yes, sir.

21 SENATOR DEAN: I would like to propose a
22 time certain of 5:50 on the bill as proposed
23 for a vote.

24 SENATOR GAETZ: Is there objection? Is
25 there objection?

1 A VOICE: I would object.

2 SENATOR GAETZ: All right. Then the
3 request is that there be a time certain vote on
4 the bill of 5:50. The Secretary will call the
5 roll.

6 A VOICE: I have a question.

7 SENATOR GAETZ: Do you have a question --

8

9 A VOICE: Yes, I do.

10 SENATOR GAETZ: Slow down, take it easy.
11 Do you have a question as to the procedure we
12 are about to undertake with a vote?

13 A VOICE: Yes, sir.

14 SENATOR GAETZ: What is the question?

15 A VOICE: The question is this: Are we
16 going to have a time certain to vote on the
17 bill and then we will do the -- and when are we
18 going to do the amendments --

19 SENATOR GAETZ: As soon as everyone quits
20 talking, we will do the amendments. The
21 Secretary will call the roll on Senator Dean's
22 motion, and the motion is a time certain vote
23 on the bill at 5:50, which would require us to
24 deal with the amendments before then.

25 THE CLERK: Senator Altman?

1 SENATOR ALTMAN: No.

2 THE CLERK: Senator Benacquisto?

3 Senator Braynon?

4 SENATOR BRAYNON: Yes.

5 THE CLERK: Senator Bullard?

6 Senator Dean?

7 SENATOR DEAN: Yes.

8 THE CLERK: Senator Detert?

9 SENATOR DETERT: Yes.

10 THE CLERK: Senator Diaz de la Portilla?

11 SENATOR DIAZ DE LA PORTILLA: No.

12 THE CLERK: Senator Evers?

13 SENATOR EVERS: No.

14 THE CLERK: Senator Flores?

15 SENATOR FLORES: Yes.

16 THE CLERK: Senator Garcia?

17 SENATOR GARCIA: Yes.

18 THE CLERK: Senator Gardiner?

19 SENATOR GARDINER: Yes.

20 THE CLERK: Senator Gibson?

21 SENATOR GIBSON: No.

22 THE CLERK: Senator Hays?

23 SENATOR HAYS: Yes.

24 THE CLERK: Senator Joyner?

25 SENATOR JOYNER: Yes.

1 THE CLERK: Senator Latvala?
2 SENATOR LATVALA: Yes.
3 THE CLERK: Senator Lynn?
4 SENATOR LYNN: Yes.
5 THE CLERK: Senator Montford?
6 SENATOR MONTFORD: Yes.
7 THE CLERK: Senator Negrón?
8 SENATOR NEGRÓN: Yes.
9 THE CLERK: Senator Rich?
10 SENATOR RICH: Yes.
11 THE CLERK: Senator Sachs?
12 SENATOR SACHS: No.
13 THE CLERK: Senator Simmons?
14 SENATOR SIMMONS: Yes.
15 THE CLERK: Senator Siplin?
16 SENATOR SIPLIN: Yes.
17 THE CLERK: Senator Smith?
18 SENATOR SMITH: Yes.
19 THE CLERK: Senator Sobel?
20 SENATOR SOBEL: Yes.
21 THE CLERK: I'm sorry?
22 SENATOR SOBEL: Yes.
23 SENATOR GAETZ: Please finish the roll
24 call.
25 THE CLERK: Senator Storms?

1 Senator Thrasher?

2 SENATOR THRASHER: Yes.

3 THE CLERK: Senator Wise?

4 SENATOR WISE: Yes.

5 THE CLERK: Senator Margolis?

6 SENATOR MARGOLIS: Yes.

7 THE CLERK: Senator Gaetz?

8 SENATOR GAETZ: Yes, and the motion is
9 adopted, and now we will budget our time to be
10 fair to those who have proposed amendments. We
11 will provide a -- 15 minutes for Senator Diaz
12 de la Portilla's amendment and we will attempt
13 to take a vote, therefore, at 4:20.

14 Senator Diaz de la Portilla, you are
15 recognized on amendment bar code 656326.

16 SENATOR DIAZ DE LA PORTILLA: Okay. Thank
17 you, Mr. Chairman, and what I would like to do
18 is I would like to ask Mr. Guthrie to walk us
19 through the map as it pertains to the districts
20 that we have not discussed and covered yet in
21 the PCB so that we can then discuss my
22 amendment in its proper context.

23 SENATOR GAETZ: Senator Diaz de la
24 Portilla, every single district in the state?

25 SENATOR DIAZ DE LA PORTILLA: No, sir, I

1 was specifically talking about the ones we
2 hadn't mentioned. I think at last count we
3 stopped, I think, at 32, so there are about
4 eight districts left, mostly -- or namely the
5 south Florida districts.

6 SENATOR GAETZ: Okay. You want to talk
7 about south Florida. May we do that, Mr.
8 Guthrie, please?

9 MR. GUTHRIE: Yes. At the outset, I
10 mentioned that there were a total of 16
11 districts that were not affected by the
12 proposed committee substitute. Many of those
13 are in Miami-Dade County. The configuration of
14 the five -- six districts in Miami-Dade County
15 is as follows: We have a Hispanic district
16 in -- represented by Senator Diaz de la
17 Portilla in -- or in the area similar to what
18 he represents today in the Little Havana, Calle
19 Ocho and south area. West Dade is in District
20 39, and Hialeah and Miami -- Hialeah, Miami
21 Springs are in District 33. Those are all
22 Hispanic majority districts. District 35
23 starts at the Broward County line and extends
24 south to Homestead. That district is just over
25 50 percent Hispanic VAP. District 38 is in

1 northern Miami-Dade County and southern Broward
2 County. That district is 58.3 percent black
3 voting age population. And District 40, as we
4 mentioned earlier, is in Miami-Dade, also in
5 Hendry, Collier and Monroe Counties. It is
6 protected against retrogression by Section 5 of
7 the Voting Rights Act. District 40 includes
8 the areas just mentioned, plus as we discussed
9 earlier, it extends in the area of the airport
10 east to pick up communities of downtown Miami,
11 including Overtown, El Portal and -- well, that
12 is basically the districts.

13 So is that the explanation you wanted,
14 Senator Diaz de la Portilla?

15 SENATOR GAETZ: Senator Diaz de la
16 Portilla, you are recognized on your amendment.

17 SENATOR DIAZ DE LA PORTILLA: Yes, thank
18 you, that is exactly what I wanted.

19 Now if you could walk us through the
20 amendment and what districts it impacts now.

21 SENATOR GAETZ: Senator, you wish -- have
22 to explain your amendment?

23 SENATOR DIAZ DE LA PORTILLA: Well, with
24 the amendment -- I will explain the amendment,
25 but I think just like the staff went through

1 the PCB and what it impacts and what the
2 practical effects of that are --

3 SENATOR GAETZ: Okay.

4 SENATOR DIAZ DE LA PORTILLA: -- vis-a-vis
5 the Constitution, I would like to have the same
6 type of analysis and presentation made by
7 staff --

8 SENATOR GAETZ: Okay.

9 SENATOR DIAZ DE LA PORTILLA: -- for the
10 amendment as they did for the PCB.

11 SENATOR GAETZ: Of course. Be happy to
12 let you do that. Would you, to the best of
13 your knowledge, explain Senator Diaz de la
14 Portilla's amendment? And please be advised
15 you are on the clock.

16 MR. GUTHRIE: So we have the same numbers
17 of districts generally in Miami-Dade County.
18 One difference is that in the proposed
19 committee substitute, there are two districts
20 that extend out -- outside of Miami-Dade
21 County. Those are District 38, which -- well,
22 let's start with District 40. District 40
23 extends out of Miami-Dade County as required by
24 Section 5 of the Voting Rights Act, then
25 District -- we need one more district to extend

1 outside of Miami-Dade County in order to make
2 the requisite population to constitute eight
3 districts -- or, excuse me, six districts in
4 that area, and so that is the district in the
5 areas currently represented by Senator Margolis
6 and Senator Braynon. As we said, that is a
7 majority-minority 58 percent black district.

8 Going back to the alternate proposal by
9 Senator Diaz de la Portilla, the Coral
10 Gables/Pinecrest/Calle Ocho area is in District
11 37. That district has an extension down to the
12 Homestead/Florida City area. District 39 is --
13 similar to the other map is in west Dade. It
14 includes an extension down through Cutler Bay
15 to Homestead. District 40, similar to the
16 district in the proposed committee substitute,
17 has an extension up toward the Cutler Bay area.
18 Unlike the proposed committee substitute, the
19 District 40, instead of coming in at the
20 airport and connecting to Overtown/El Portal,
21 the district extends north to the
22 Miramar/Pembroke Pines area and includes
23 population in south Broward and north
24 Miami-Dade County. District 33 is a smaller
25 part of Miami Springs, plus most of Hialeah.

1 District 38 in the alternate proposal stops at
2 the Miami-Dade County line and extends south
3 from there. And there is a District 35 along
4 the beaches in Miami-Dade County which includes
5 Little Havana and some of the downtown areas
6 that are more heavily Hispanic.

7 The net of that -- those changes is -- in
8 terms of racial composition is that you have
9 four districts that are -- have a substantial
10 majority of Hispanic voting age population, you
11 have one district, as before, that is majority
12 black voting age population. The Ft.
13 Lauderdale district in this alternate proposal
14 is less than 50 percent, and the District 40
15 proposal -- or alternative here is 32.5 percent
16 black VAP rather than 35.3. Both of those
17 numbers are higher than the benchmark
18 African-American population of Senator
19 Bullard's district, District 39.

20 SENATOR GAETZ: And let's stop there.
21 Questions for Senator Diaz de la Portilla about
22 his proposal? Question, Senator Negron?

23 SENATOR NEGRON: Thank you very much,
24 Mr. Chairman.

25 Senator, in looking at the Court's ruling

1 where they are very specific in saying we
2 should remedy problems with respect to the
3 districts and it names the numbers, the eight
4 numbers, what's the rationale for your
5 amendment which redraws districts that have
6 already passed constitutional muster? Why
7 would you be doing that?

8 SENATOR GAETZ: Senator Diaz de la
9 Portilla for an answer.

10 SENATOR DIAZ DE LA PORTILLA: A couple of
11 reasons. I think you -- for one, and we laid
12 the predicate for this in the discussion that
13 we had earlier, that while the Florida Supreme
14 Court has looked at all of the districts and
15 found problems with eight and felt that 24
16 would be affected, nothing precludes the Court
17 on a re-look on the bill to take a look at all
18 of the districts and apply a second look-over.
19 That was confirmed up by Mr. Bardos, number
20 one.

21 Number two, the Florida Supreme Court, as
22 you know, Senator Negron, looked at the maps
23 based on whether they meet or pass
24 constitutional muster as per Florida law and
25 the Florida Constitution. And while in the

1 Tier 1 criteria there is a factor that -- where
2 you consider diminution of minority --
3 minorities, language or racial minorities being
4 able to elect candidates of their own choice,
5 it doesn't go into an analysis under the Voting
6 Rights Act. That will be done in the event of
7 a challenge at some point, if there is one, and
8 it would be in different forum, which wouldn't
9 be the state courts, it would be the federal
10 courts. So that is one thing.

11 The other thing that we tried to do with
12 very short notice and limited access to
13 resources was to address an issue that I think
14 on its -- a couple of things. Number one, to
15 make the districts more compact. I think the
16 -- all of the numbers that we have for the
17 districts in south Florida under the plan that
18 I am proposing in terms of the mathematical
19 measures are considerably more compact than
20 what is in the PCB.

21 In addition to that, and there was mention
22 to this, currently there are three Hispanic
23 seats in the south Florida area. I believe
24 that there is sufficient population in the
25 south Florida area to justify a potential

1 possibly fourth Hispanic seat, and you can do
2 this without affecting or having any
3 retrogression in any African-American seat or
4 affecting any other minority adversely.

5 And so that is the general idea or ideas
6 that are driving the map and that brought this
7 map forward. I think we have an opportunity
8 to -- for example, in the seat that is -- that
9 is thirty -- District 35 under the PCB, to make
10 it potentially an Hispanic access seat, and I
11 think the numbers and the population justify
12 that. So basically those are the driving
13 arguments. I mean, number one --

14 SENATOR GAETZ: In the interest of time,
15 let's not repeat what we have already said,
16 because we are soon to be on other people's
17 time.

18 Senator Thrasher for a question.

19 SENATOR THRASHER: Thank you,
20 Mr. Chairman.

21 It is kind along the same lines, Senator
22 Diaz de la Portilla, as Senator Negrón's
23 question. As I see the Court opinion, they
24 invalidated a number of districts, 1, 3, 6, 9,
25 10, 29 and 30 and 34, on the basis of a number

1 of things: Failed to conduct the functional
2 analysis, compactness was not adhered to in
3 some instances, utilization of existing
4 boundaries was not done. Therefore, they
5 implied a visual intent that we had failed to
6 meet the Constitution under Amendments 5 and 6.

7 Can you explain to me, given what Senator
8 Negrón just asked and the specificity in which
9 the Court determined that we have examined --
10 and I am quoting on page 184, "We have examined
11 and declared Senate Districts 1, 3, 6, 9, 10,
12 29, 30 and 34 in violation of the
13 constitutional requirements." Can you tell me
14 how your map actually is a better response to
15 those constitutional concerns than the map
16 proposed by -- that is before us in the
17 committee substitute?

18 SENATOR GAETZ: The sponsor for an answer.

19 SENATOR DIAZ DE LA PORTILLA: Absolutely,
20 although I could object as asked and answered,
21 but I will give it another answer to that.

22 Again, I think that -- and you heard it
23 here from Mr. Bardos, who is our counsel --
24 nothing precludes or prevents the Court on
25 review of whatever new bill we pass out of here

1 in this extraordinary session from taking a
2 look at all the districts, and if you can make
3 these districts in south Florida and others
4 more compact and conform more with the
5 requirements in the Florida Constitution and
6 the Fair Districts requirements, and advance
7 the spirit of the Fair Districts requirement
8 even more, that is an improvement. In addition
9 to that, as I said to Senator Negrón earlier, I
10 think that there may be potentially issues that
11 could be raised in a federal challenge under
12 federal law that we could address and preempt
13 by having a map that more closely follows what
14 I believe the spirit and intent of the Voting
15 Rights Act is.

16 SENATOR THRASHER: Chairman, follow-up, a
17 brief follow-up?

18 SENATOR GAETZ: Very briefly.

19 SENATOR THRASHER: Very brief, I promise.

20 We listened to seven hours or so many
21 hours of discussion about the proposed
22 committee substitute. Let me get very
23 specific. Can you tell me in Senate District 9
24 how your map makes it more compact than the
25 proposed committee substitute?

1 SENATOR GAETZ: Senator Diaz de la
2 Portilla.

3 SENATOR DIAZ DE LA PORTILLA: I don't
4 think we are affecting Senate District 9 at all
5 in my proposal. I don't believe we are
6 affecting it at all, but I'd, you know, yield
7 to Senator -- to Senator -- he has been talking
8 to us so long he sounds like a Senator -- to
9 Mr. Guthrie. But I don't believe there -- it
10 has absolutely any impact on District 9.

11 SENATOR GAETZ: All right. Further
12 questions? Senator Detert for a question. And
13 now, we are going to be fair to the other
14 amendment sponsors. We've got less than 30
15 minutes before we have a time certain vote. We
16 have two other amendments, they are both
17 substantive. So Senator Detert.

18 SENATOR DETERT: Senator Diaz de la
19 Portilla, comparing your --

20 SENATOR GAETZ: I'm sorry, I do. I was
21 being helpful. Go ahead.

22 SENATOR DETERT: Comparing your amended
23 map to the one we are currently looking at,
24 could you explain to me why it would be
25 beneficial under your amended map to disrupt

1 Broward, Martin and Palm Beach in order to make
2 these changes?

3 SENATOR GAETZ: Senator Diaz de la
4 Portilla for an answer.

5 SENATOR DIAZ DE LA PORTILLA: Well, I
6 would disagree with the premise that there is a
7 disruption. I think if you take a look at the
8 Tier 2 criteria, clearly, as indicated by the
9 Florida Supreme Court and by the very words and
10 plain language of the Florida Constitution, the
11 issue of following political and geographic
12 boundaries are -- is a matter of -- it is
13 qualified, as is -- but, however, the issue of
14 compactness is not. What I am proposing in my
15 map creates much more compact districts. And
16 so that is -- that is the idea there.

17 SENATOR GAETZ: Senator Benacquisto.

18 SENATOR BENACQUISTO: Thank you, Mr.
19 Chairman.

20 SENATOR GAETZ: And I apologize, I was --
21 I was being hopeful as to an earlier -- I
22 thought -- my old eyes here, I thought we had
23 less time left than we do. So, Senator
24 Thrasher, I apologize to you, and Senator
25 Negron and Senator Diaz de la Portilla, for

1 cutting you off a little quick, but Senator
2 Benacquisto, you are recognized.

3 SENATOR BENACQUISTO: Thank you, Mr.
4 Chairman.

5 Senator Diaz de la Portilla, with regard
6 to Districts 23 and 30, if you could explain to
7 me why -- in the configuration that we
8 originally approved for those two districts,
9 the Supreme Court rejected them as invalid.
10 And in your amendment that you have presented
11 today, you went back to that original
12 configuration, and I am just wondering why that
13 was done when the Supreme Court has ruled that
14 that would not stand up to --

15 SENATOR GAETZ: Senator Diaz de la
16 Portilla.

17 SENATOR DIAZ DE LA PORTILLA: Well, I
18 believe you are wrong, Senator Benacquisto, on
19 your premise. I don't think the Supreme Court
20 said anything about District 23. They did
21 mention District 30, and so in the context of
22 the original plan, 1176 that we passed out of
23 here, the Supreme Court's comments in
24 invalidating that map were directed at District
25 30, not at District -- not at District 23.

1 What I have done in my map is that I have
2 modified -- no, it isn't. It is modified
3 slightly, it is. It probably needs a tweak
4 there.

5 SENATOR GAETZ: Okay. And Leader Rich?

6 SENATOR RICH: Thank you, Mr. Chair. I
7 guess I have a couple of questions. I am --

8 SENATOR GAETZ: Leader, could I ask you to
9 take your mike a little closer, please?

10 SENATOR RICH: I am wondering if there's
11 been a functional analysis done. I am looking
12 at Senate District 39, which appears to be
13 pretty compact in the 9016 map, and yet in the
14 one that is Senator de la Portilla's, there is
15 this, I guess, you know, kind of visually very
16 strange appendage coming down the side of 39.
17 So I am wondering how that could be more
18 compact than the one that we are looking at in
19 the plan that we were discussing this morning.

20 SENATOR GAETZ: That would seem to be a
21 factual question. Mr. Guthrie, has there been
22 a geometric analysis done that could answer
23 Leader Rich's question?

24 MR. GUTHRIE: There has, Senator Gaetz.

25 The end-to-end length of District 29 in Senator

1 Diaz de la Portilla's --

2 SENATOR RICH: No, 39, excuse me.

3 MR. GUTHRIE: Twenty-nine or 39?

4 SENATOR RICH: Thirty-nine.

5 MR. GUTHRIE: I'm sorry. The end-to-end
6 distance of District 39 is 28 miles, versus --
7 what are we comparing it to in the --

8 SENATOR GAETZ: Comparing it to the PCB
9 and the Diaz de la Portilla amendment.

10 SENATOR RICH: And I was looking at the
11 functional analysis of compactness, because
12 there seems to be -- the PCB seems to be
13 compact without any appendages, and then the 39
14 that I am looking at here seems to kind of run
15 --

16 MR. GUTHRIE: Okay, I am with you.

17 SENATOR RICH: -- all the way --

18 MR. GUTHRIE: So your question is the two
19 39s and how do they compare --

20 SENATOR RICH: Yes.

21 MR. GUTHRIE: -- not on end-to-end
22 distance, but on compactness. So the convex
23 hull score is similar. As I had mentioned
24 earlier, you don't get penalized for
25 protrusions into a district with convex hull,

1 so it is point seven -- .90 in the PCS, .75 in
2 Senator Diaz de la Portilla's amendment. In
3 terms of Reock ratio, the circle test, it is
4 .41 in the PCS, and actually a little higher,
5 .47, in Senator Diaz de la Portilla's
6 alternative. The Polsby-Popper measure, which
7 is most sensitive to an irregular border on the
8 district goes from .49 in the PCS to .22 in
9 Senator Diaz de la Portilla's alternative.

10 SENATOR GAETZ: Was that responsive,
11 ma'am?

12 SENATOR RICH: Yes, thank you, and I just
13 have one other.

14 SENATOR GAETZ: Of course.

15 SENATOR RICH: There appears to be an area
16 that is unassigned on this map right at the
17 Broward line -- well, not at the Broward line,
18 but at I-75, there is -- it is kind of like a
19 salmon color next to the green. Could you just
20 comment on that, Senator --

21 SENATOR GAETZ: Senator Diaz de la
22 Portilla.

23 SENATOR DIAZ DE LA PORTILLA: Again, I
24 believe that it is assigned and that staff
25 addressed it in the amendment, which is what we

1 are discussing. Mr. Guthrie, I yield to you to
2 answer that.

3 SENATOR GAETZ: I believe, Leader Rich,
4 that when Senator Diaz de la Portilla filed his
5 first amendment, there were some -- there were
6 some cartography that wasn't technically right,
7 and staff helped him, I think it is fair to
8 say, by making some corrections, not to the --
9 with the staff's bias, but in order to respond
10 to his -- to the sponsor's concerns. Is that
11 about right, sir?

12 SENATOR DIAZ DE LA PORTILLA: That is
13 correct, and there were some technical glitches
14 in the program that I think accounted to that,
15 and that is the difference between the first
16 map and the second map. Is that right, Mr.
17 Guthrie?

18 MR. GUTHRIE: Let me make sure that we are
19 in the right posture here. Senator Diaz de la
20 Portilla had two amendments. The first one was
21 map 9020. That has been withdrawn, I
22 believe --

23 SENATOR DIAZ DE LA PORTILLA: Correct.

24 MR. GUTHRIE: -- and we are on map 9024.
25 That is the one to which staff made the

1 technical corrections.

2 SENATOR GAETZ: Is everybody settled
3 there? That may answer a couple of the
4 questions.

5 Leader Smith.

6 SENATOR SMITH: Mr. Guthrie, a quick
7 question. In your introduction of the map, you
8 mentioned Senate District 34 in this plan, and
9 I thought you said something about
10 retrogression or the numbers had gone down.
11 Could you give us an indication of the numbers
12 of Senate District 34?

13 SENATOR GAETZ: Mr. Guthrie.

14 MR. GUTHRIE: The black VAP of Senate
15 District 34 in the PCS is 50.1 percent. The
16 black VAP in District 34 in the amendment is
17 47.8 percent.

18 SENATOR GAETZ: Leader Rich.

19 SENATOR RICH: Thank you, Mr. Chair. I
20 just wanted to ask one follow-up question on
21 the -- that issue of the unassigned.

22 So the unassigned piece evidently is now a
23 part of -- a part that goes all the way up
24 through -- into Martin County, is that correct?

25 SENATOR GAETZ: Mr. Guthrie, can you

1 respond?

2 SENATOR RICH: So it takes Broward and
3 connects it with Palm Beach and with Martin
4 County?

5 MR. GUTHRIE: Well, let's actually look at
6 it here. It looks to me like -- I am not sure
7 where the unassigned -- help me find the
8 unassigned territory you are referring to in
9 the originally filed map. Was that in Treasure
10 Coast, or was it --

11 SENATOR RICH: No, it is in Broward
12 County --

13 MR. GUTHRIE: Okay.

14 SENATOR RICH: -- just south of I-75, and
15 I think it would probably be Weston, Southwest
16 Ranches, that area, I think is what was
17 unassigned.

18 MR. GUTHRIE: Okay. I apologize, I am not
19 -- no, I am not finding it here, but --

20 A VOICE: That's because it isn't there.

21 SENATOR GAETZ: And, Leader, if -- I think
22 if we stay on map 9024, that is the map that
23 the staff corrected.

24 A VOICE: Correct.

25 SENATOR RICH: Okay. So that is -- in

1 that map, that area that was unassigned is the
2 portion -- is part of Broward County that is
3 now connected to Palm Beach and Martin County,
4 as far as I can see.

5 SENATOR GAETZ: Is that correct, Senator
6 Diaz de la Portilla?

7 SENATOR DIAZ DE LA PORTILLA: I really
8 don't know what Senator Rich is referring to.
9 I can't really follow it here on the map.

10 SENATOR GAETZ: Weston, I believe, is the
11 area.

12 Further questions for the sponsor?
13 Senator Storms.

14 SENATOR STORMS: Senator Diaz de la
15 Portilla, I don't have an objection to having a
16 Hispanic minority access seat in south Florida,
17 another one, I don't have any objection to it
18 at all. What I am concerned about is sort of
19 Jay Leno and the baseball cap on 32. If you
20 look at him from the side, it is clearly Jay
21 Leno's chin and his nose and a baseball cap,
22 and I just -- I think that the Supreme Court --

23 SENATOR GAETZ: You may not be able to do
24 tomorrow --

25 SENATOR STORMS: You've got to bring it

1 down some, John, to see Jay. There he is. His
2 mouth is open. And so, I mean, I just -- I
3 think that we run the risk of having an
4 objection to a district, you know, based on
5 some -- I don't know how you fix that. In
6 other words, I want to help you with what you
7 are trying to achieve, but I think 32 is hard
8 to overcome. Can you address that?

9 SENATOR GAETZ: Sponsor, please.

10 SENATOR DIAZ DE LA PORTILLA: I think that
11 that point is well taken, but Jay Leno is
12 considered a very handsome fellow in certain
13 circles, so -- and I don't know that it is any
14 less good-looking, if you will, than the stick
15 figure in the PCB under 32. So, you know,
16 obviously there is -- there is a little bit of,
17 you know, in the eye of the beholder in looking
18 at these -- at these things.

19 SENATOR GAETZ: And, Leader Rich, I think
20 this map here does depict the issue that you
21 were raising, where I believe the sponsor can
22 certainly correct us, where we are going from
23 Southwest Ranches to -- actually, to Port St.
24 Lucie. I think this depicts the issue that you
25 were raising. And so, therefore, Senator Diaz

1 de la Portilla, did you want to respond now
2 that we can see it more clearly? I apologize
3 we didn't have it before.

4 SENATOR DIAZ DE LA PORTILLA: I'm sorry,
5 if Mr. Guthrie could just point it out on the
6 big map to me, I can address it. And what is
7 the question specifically?

8 SENATOR GAETZ: Well, Leader Rich, did you
9 want to rearticulate your question?

10 SENATOR RICH: No.

11 SENATOR GAETZ: Okay. That has been
12 disposed of.

13 Further questions on the Diaz de la
14 Portilla amendment?

15 A VOICE: Mr. Chair?

16 SENATOR GAETZ: Just a moment. We will
17 take further questions. You are recognized to
18 close on your amendment.

19 SENATOR DIAZ DE LA PORTILLA: I think what
20 I am going to do is I am going to TP the
21 amendment at this juncture, Mr. Chair.

22 SENATOR GAETZ: Show the amendment
23 temporarily postponed. And now let us go to
24 Senator Latvala's amendment. And, Senator
25 Latvala, you have two amendments, and I gather

1 there is one that you wish to withdraw and
2 another you wish to go forward with, is that
3 right, sir?

4 SENATOR LATVALA: The second one, which
5 would be --

6 SENATOR GAETZ: 9022?

7 SENATOR LATVALA: -- 9022 is the one that
8 we would like to proceed with.

9 SENATOR GAETZ: All right. Show --
10 without objection, show amendment bar code
11 786012 by Senator Latvala withdrawn. Is that
12 correct, Senator Latvala? And now take up
13 amendment bar code 332304 by Senator Latvala.
14 You are recognized on the amendment, sir. And
15 the amendment is late filed. Show it
16 introduced without objection.

17 SENATOR LATVALA: Is that -- is that the
18 Plan 9022?

19 SENATOR GAETZ: Yes, sir, that is Plan
20 9022 that is now before us.

21 SENATOR LATVALA: Thank you, Mr. Chairman.

22 I have been concerned about trying to find
23 a solution to the Orange County/Seminole County
24 area, an area that was kicked back to us by the
25 Court. We have a -- we have a particular -- I

1 think it is a particularly difficult situation
2 there to -- as I stated earlier this afternoon,
3 we have two different minority districts, and
4 then we have a lot of non-minority people who
5 live in the middle of them. To put those
6 non-minorities in one district or the other
7 would dilute them unnecessarily, and probably
8 unconstitutionally. So we have to figure out
9 what to do with them. And this is another
10 approach other than the one that you took with
11 your amendment, which -- which took District 10
12 to the east toward Brevard County. This
13 basically takes the appendage and splits it in
14 half between District 10 and District 13.

15 And for some technical backup and support,
16 I would like to call on my personal legal
17 counsel on this issue, Senator Simmons, for the
18 analysis of it and kind of a little more
19 explanation of why we did this.

20 SENATOR GAETZ: Senator Simmons, you are
21 recognized.

22 SENATOR SIMMONS: Thank you, Mr. Chair.

23 In looking at central Florida, I think the
24 important thing to do, as well as looking at
25 the entirety of the state, is to do as I

1 previously referred to and discussed at the
2 beginning of this meeting, and that is that
3 first the scope of this is that we are going to
4 look at the districts that the Supreme Court
5 found to be invalid; in other words, follow the
6 common sense view that if it ain't broke, don't
7 fix it. And so for those districts that the
8 Court did not find broken, we don't need to go
9 ahead and try to fix them, but for the ones
10 that were found to be deficient, those are the
11 ones with the surrounding areas as necessary
12 that we need to work on.

13 There is another rule that I believe that
14 we should follow and I submit to you is when in
15 doubt, read the instructions. And the Florida
16 Supreme Court's decision regarding central
17 Florida starts on page 156, and they are
18 exceedingly clear with respect to their
19 analysis regarding Districts -- particularly
20 District 10. And if you look on page 157 of
21 the opinion, they say, "A visual examination of
22 the challenged districts" -- and by the way,
23 there were challenges to both 10, as well as to
24 12. So we know that 12 was also challenged and
25 was not found to be invalid, and 10 was

1 challenged as well. But on page 157 of the
2 opinion, the Supreme Court says, "A visual
3 examination of the challenged districts is set
4 forth below. As shown in the above map,
5 District 10 is located mostly on the west side
6 of Orlando, and this portion of the district is
7 fairly compact," going ahead and explaining how
8 it goes. And then it goes on and says, "It
9 creates an odd-shaped appendage that reaches
10 out towards District 13." Then the Court goes
11 ahead and does the Reock analysis and the area
12 convex hull analysis and says at the bottom of
13 page 158: "Although the compactness measures
14 for District 10 reflect that the district is
15 overall relatively compact, District 10 is
16 visually non-compact as a result of the
17 bizarrely-shaped appendage." And then it cites
18 a case out of Alaska saying, "Appendages
19 attached to otherwise compact areas may violate
20 the requirement of compact districting."

21 The Court then goes on and continues its
22 remarks about the appendage and ultimately
23 makes its holding about the appendage and says
24 on page 161, "Based on the objective data
25 before this Court, we conclude that District 10

1 violates constitutional mandates because it is
2 visually non-compact with an appendage that
3 reaches out to clearly encompass an incumbent,
4 and this bizarre shape cannot be justified
5 based on concerns pertaining to ensuring
6 minority voting strength. District 10 is
7 constitutionally invalid."

8 So our instructions are clear. The
9 instruction is that there shall be no
10 appendage. They believe that using a visual
11 analysis -- if you sort of summarize 234 pages
12 of opinion, members, you come to this: That
13 minority access is a Tier 1 obligation for this
14 Legislature, just as we have said, and
15 compactness, you are supposed to subordinate
16 compactness to assuring minority access. If
17 you can meet both of the concerns, as was done
18 with respect to this amendment that is
19 dealing -- or the Chairman's amendment dealing
20 with northeast Florida, then that is what you
21 are supposed to do. If you can't do it, like
22 19, then, you know, you ought -- you don't have
23 compactness.

24 There was an attack on District 12, and
25 the Court simply said with respect to District

1 12, "We fail to consider whether this goal
2 could be obtained by performing an analysis
3 that adheres to all constitutional criteria."
4 They told us to go ahead and do the functional
5 analysis with respect to 12. They did not find
6 it to be invalid. So we are supposed to go
7 ahead and do the functional analysis.

8 The second thing in the summarization, or
9 I guess the compilation of what this 234-page
10 opinion is, is that if you are not a minority
11 access district, you'd better have visual
12 compactness consistent with political and
13 geographic boundaries. And if you don't meet
14 that standard, you don't meet the next
15 standard, which is called the smell test,
16 because if you don't do that, it doesn't smell
17 good, and so then you've got a real problem.
18 And they even go to the point that even if the
19 Reock is okay and the hull convex ruling is --
20 analysis is okay, if you have an appendage on a
21 non-minority district, you are in trouble.

22 So with that analysis then, let's look at
23 what Senator Latvala's amendment does, because
24 let's go to the problem. The problem is that
25 District 10 has an appendage. And that is true

1 irrespective of whether you are talking about
2 the original 10 or the 10 that is before us
3 today. There is an appendage there. Ten on
4 the east is a mirror image of 10 on the west
5 with still the appendage in the middle. And
6 how do you solve something like an appendage in
7 the middle? And here is the problem: The
8 conundrum that this Committee and this
9 Legislature is faced with is there is, in fact,
10 a minority access, which is 12, district to the
11 west, and there is a minority access, which is
12 14 to the east. So there exists this corridor
13 of white individuals between two minority
14 access districts, and the Supreme Court has
15 said no -- no appendage.

16 So someone would say, "How do you solve
17 that problem?" Well, you don't solve it by
18 keeping the appendage, that is for sure,
19 because the instructions given to us are get
20 rid of the appendage. You can attach the
21 appendage from the south, that is not going to
22 work, to a non-minority district. You can
23 attach it to the north. Both of those are
24 problematic and equally as defective.

25 But you can do this: You can do away with

1 the appendage. Do what the Florida Supreme
2 Court said, do away with the appendage. And
3 the way to do that is just sever it in the
4 middle, bring -- open up to the north, open up
5 to the south, and then you have solved this
6 problem.

7 Is that the exclusive way of solving this
8 problem? No, it is not the exclusive way to
9 solve the problem, but it is a very rational
10 and reasonable way, and that is what the record
11 needs to reflect, that we have done something
12 to comport with the instructions, the clear and
13 unequivocal instructions of this Florida
14 Supreme Court.

15 And so when you look at Senator Latvala's
16 amendment, you will see that he has done away
17 with the -- with this appendage that exists
18 there. And, as a matter of fact, the choice
19 that he made for splitting it in two and
20 widening up to the south and widening up to the
21 north is, in fact, a major thoroughfare, which
22 is the East-West Expressway, and so there is a
23 very logical place to remove this appendage.

24 Now, someone would say, "Well, why didn't
25 the Florida Supreme Court choose what was

1 proposed by the League of Women Voters, the
2 coalition," which remember when they looked at
3 the northeastern part of Florida? They looked
4 and said, "What do we do with the northeastern
5 part of Florida," and they looked for something
6 that was a way of attacking a problem. And
7 here is what happens: If you look at what --
8 in the central Florida, the Supreme Court did
9 not revert to the coalition proposal. Why did
10 they not go with the coalition proposal? And
11 you can be assured they looked at it. This is
12 one of the most thoroughly-analyzed decisions
13 that anyone could ever have, but if you look at
14 what the -- what the coalition proposal was,
15 you will see that they have the same problem
16 that the Florida Supreme Court rejected. If
17 you look at the proposal by the coalition, it
18 looks like a power drill that is pointed down
19 like a pistol, just like this, members. That
20 is the problem. And the same corridor exists
21 in the League of Women Voters' proposal as
22 exists in the Senate's originally passed bill.
23 So if you've got a power drill or either a
24 pistol that is facing down that retains this
25 illicit, improper corridor, this appendage,

1 then that is the reason, I would suggest to
2 you, that the Florida Supreme Court did not
3 revert to the -- to the coalition proposal.

4 So what else can you do, then, members?

5 Well, you go ahead and do what the Supreme
6 Court tells you to do, and that says get rid of
7 the appendage.

8 In doing this, members, I think we should
9 further follow what Senator Latvala has
10 proposed, and that is that you look at what the
11 Florida Supreme Court has told us, and the
12 Florida Supreme Court has told us that with
13 respect to District number 12, we need to do
14 the functional analysis that is appropriate.
15 And, of course, I asked the question about
16 District 12 and District 19, and those are two
17 examples of districts that are functionally
18 identical, and all we need to do, all this body
19 needs to do, is an appropriate functional
20 analysis with respect to District 12, which is
21 already sustained, the review by the Florida
22 Supreme Court, and the Florida Supreme Court
23 has said that, well, with respect to number 14,
24 which is the Hispanic district, which is on the
25 east side of this improper appendage, they have

1 said we need to come back and do a functional
2 analysis with respect to it, but they did not
3 find it invalid and it was not attacked by
4 either side. With respect to District 12, it
5 was attacked and the Florida Supreme Court did
6 not find it invalid.

7 So, members, what do we do? We do get rid
8 of the appendage like the Supreme Court asks us
9 to do. And I am sure that there will be
10 questions that somebody would ask about
11 incumbents since that was raised. Well,
12 members, this solves that problem, because it
13 uses the appropriate demarcation line, being
14 the East-West Expressway, 408, through that
15 appendage, and it provides the rational
16 explanation to anyone as to why the Senate did
17 what it has done in doing what the Florida
18 Supreme Court asked it to do, and that is get
19 rid of the appendage.

20 And so, members, if you look at the
21 functional analysis with respect to this plan
22 that is submitted by Senator Latvala, you will
23 find that District 12 is 52.7 percent Democrat,
24 24.3 percent Republican, and in the Democrats,
25 55.6 percent are black. And in the analysis of

1 voting age population, this proposal with
2 respect to District 12 is 38.4 percent black.
3 The original plan was 40 percent black. The
4 Chairman's amendment, the Saturday amendment,
5 is 37 percent black. The coalition plan was
6 35.2 percent black. And if you compare it to
7 District 6, which the Florida Supreme Court
8 approved and said that the coalition plan was
9 satisfactory, that was 42.4 percent black, and
10 so the benchmark was 46.9 percent black. So,
11 members, what you are looking at here in this
12 plan is a very rational, reasonable way of
13 approaching what has occurred.

14 With respect to the election results, with
15 respect to this plan, the performance is
16 63.5 percent for Sink in 2010 and 36.5 percent
17 for Scott. The important thing to look at,
18 members, is that there are probably around
19 20 percent Hispanics in this district, and
20 those can easily go with and create a coalition
21 with non-blacks. So as to if there were a good
22 Hispanic candidate that would cause a coalition
23 between the Hispanics and the non-minorities,
24 the result is that blacks suffer a severe,
25 severe risk of being squeezed out. So it is

1 critically important to keep the number with
2 respect to African-Americans in this District
3 12 at a reasonable figure, and this amendment
4 does that.

5 Members, this does take District 14 and
6 keeps the Hispanics at 48.5 percent. The
7 League of Women Voters' coalition plan was at
8 43 percent. The District 10 analysis is
9 Democrats, 36.1 percent; Republicans, 39.8
10 percent. And District 13 is Democrats, 33.4
11 percent, and Republicans, 42.0 percent,
12 consistent with what they previously were.

13 And so, members, what we have done here --
14 what Senator Latvala has done in this
15 particular amendment is to address the issues
16 raised by the Florida Supreme Court. One of
17 them is that there better not be an appendage,
18 and the second one is -- members, if you will
19 look at the existing plan, the question is
20 going to be raised with respect to the ribbon
21 of approximately 10 miles on the north side of
22 Seminole County. It does not follow any county
23 lines, it is just a ribbon, a corridor of
24 property on the north side of Seminole County.
25 And then again, members, the Supreme Court said

1 that 12, 13 and 14 are not invalid, and the
2 instructions by the Florida Supreme Court are
3 to conform to the judgment.

4 And so, members, the reasoning by Senator
5 Latvala I submit to you is sound, and the
6 points that he is making by doing this are, in
7 fact, in accordance with the instructions by
8 the Florida Supreme Court.

9 SENATOR GAETZ: Senator Latvala, did you
10 have any further introductory comments on the
11 amendment?

12 SENATOR LATVALA: No, thank you. I am
13 just amazed at how smart I am. Thank you very
14 much.

15 SENATOR GAETZ: You are. Just by osmosis,
16 just sitting next to the guy.

17 Questions for Senator Latvala or Senator
18 Simmons?

19 SENATOR NEGRON: I have a question.

20 SENATOR GAETZ: Yes, Senator Negrón for a
21 question.

22 SENATOR NEGRON: Thank you, and I'll
23 address this, with your permission, to Senator
24 Simmons.

25 SENATOR GAETZ: Please.

1 SENATOR NEGRON: In reading the opinion,
2 it looks to me like the Court rejected 10
3 because the appendage of about 160,000 people
4 favored an incumbent, that is the ruling. Now,
5 the Chairman's amendment that we are calling
6 the PCB fundamentally reconfigured the makeup
7 of the district, and it actually paired two
8 incumbents in that district in response. Would
9 you agree that the effect of amendment 9022
10 that you presented, that you've simply widened
11 the corridor, instead of eliminating it, you've
12 widened it, and it's done so at the expense of
13 reducing the number of Hispanic voters in
14 Districts 14, I believe from about 50 percent
15 to about 48.5 percent? For Senator Simmons or
16 wherever the Chairman directs.

17 SENATOR GAETZ: Senator Negrón, did you
18 wish to follow up?

19 SENATOR NEGRON: No, Senator. Is it okay
20 if Senator Simmons answers the question?

21 SENATOR GAETZ: Absolutely.

22 SENATOR NEGRON: Okay, Senator Simmons.

23 SENATOR SIMMONS: Yes, the answer to that,
24 Senator Negrón, is that the Florida Supreme
25 Court was very clear that there shall be no

1 appendage. And if you look at the map from
2 Saturday, there still is an appendage there.
3 So the instructions are to get rid of the
4 appendage, and so there's only one way to do
5 it, and that is to split it in two, unless you
6 want to actually merge the Hispanic district so
7 that it is flush with the African-American
8 district, which would therefore dilute
9 unreasonably both sides.

10 The proposal here does do what the Florida
11 Supreme Court asks -- not only asks,
12 instructs -- and that is to go ahead and get
13 this accomplished, getting rid of the
14 appendage, but at the same time, the minimal
15 dilution that occurs is truly insignificant,
16 because the League of Women Voters is -- for
17 the Hispanic district is 43 percent Hispanic,
18 and they were satisfied at 43 percent. This
19 proposal is 48.5 percent Hispanic, and if you
20 want to compare it to the Supreme Court's
21 analysis with respect to District 6, which is a
22 district that they specifically discussed in
23 detail in northeast Florida, they -- in the
24 coalition district, with respect to blacks,
25 they had 42.4 percent African-American. So to

1 have 48.5 percent in this district is a
2 tremendous accomplishment, it is rational, it
3 preserves the rights of Hispanics, but at the
4 same time deals with the improper and undue
5 dilution that would occur if, in fact, the
6 Hispanic district were merged up against the
7 African-American district, which would result
8 in an improper dilution of both of those
9 districts.

10 SENATOR GAETZ: Senator Negron to follow
11 up, and then Senator Siplin and then Leader
12 Smith.

13 SENATOR NEGRON: Thank you very much for
14 that thorough answer, but you would acknowledge
15 that your amendment that you are explaining on
16 behalf of Senator Latvala does result in the
17 Hispanic population in the district going from
18 50 percent to 48.5 percent. So compared to the
19 Gaetz plan, the plan you are advocating is --
20 has the expense -- comes at the expense of
21 District 14 to the number of 1.5 percent of
22 Hispanic votes, is that correct?

23 SENATOR GAETZ: Senator Simmons.

24 SENATOR SIMMONS: Mr. Chair, the answer to
25 that is absolutely not, because the way that

1 this is supposed to be done, just like the
2 Florida Supreme Court said, is a functional
3 analysis. It is a functional analysis in which
4 you take into consideration all the concerns
5 that have been posed, and particularly the
6 concerns directed by the Florida Supreme Court,
7 and so functionally, it is not going to make
8 any difference. And so the purpose of this is,
9 in fact, to achieve the express directive by
10 the Florida Supreme Court as to the removal of
11 that appendage, which under the existing plan
12 still exists and it needs to be removed.

13 SENATOR GAETZ: Sure, do a follow-up, and
14 then Leader Smith.

15 SENATOR NEGRON: I can just, with your
16 permission, ask the staff director, Mr.
17 Guthrie, if you compare the 9022 amendment that
18 is being discussed right now with the
19 Chairman's plan, does it result in a diminution
20 of Hispanic votes? That is question one. And
21 then, if so, by what number?

22 SENATOR GAETZ: Mr. Guthrie.

23 MR. GUTHRIE: Mr. Chairman, with your
24 indulgence, maybe the debate could continue and
25 I will work at putting together an answer to

1 that question.

2 SENATOR GAETZ: Is that satisfactory?

3 Leader Smith.

4 SENATOR SMITH: Thank you.

5 I guess, Senator Simmons, you keep talking
6 about the appendage as it relates to District
7 14, but looking at this Plan 9022, could you
8 please revisit the reason for an appendage to
9 Senate District 12 as compared to, I guess, the
10 Gaetz Plan, which eliminates -- which doesn't
11 have an appendage on 12?

12 SENATOR GAETZ: Senator Simmons.

13 SENATOR SIMMONS: I certainly can. That
14 is an excellent question, Senator Smith, and
15 the reason why is because of the distinction
16 between being a minority access district and
17 being a non-minority access district, one that
18 is not a minority access district. And the
19 Florida Supreme Court has made it very clear
20 that if it is not a minority access district,
21 the compactness does not include an appendage
22 that is addressed -- that is stuck to it,
23 particularly an appendage of this size. And so
24 what you end up with under the existing
25 analysis, the Florida Supreme Court in this

1 opinion was reviewing this with an attack that
2 was made upon District 12, and they did not
3 find District 12 to be invalid. They did,
4 however, tell us because of its relationship to
5 District 10 that we needed to go ahead and do
6 the functional analysis with respect to
7 District 12, and Senator Latvala did do the
8 analysis with respect to District 12, and that
9 analysis was the one that was presented. It is
10 still 38.4 percent African-American compared to
11 the League of Women Voters' coalition plan of
12 35.2 percent African-American, and so there is
13 a distinction between being a minority district
14 and a non-minority district with respect to
15 appendages.

16 SENATOR GAETZ: Now, Leader Smith to
17 follow up.

18 SENATOR SMITH: At the end of your answer,
19 you compared it to the League of Women Voters.
20 I am asking for a comparison, maybe if Mr.
21 Guthrie could give us a numerical -- a
22 numerical comparison to the Gaetz plan, 9016,
23 as compared to 9022, because it looks to me
24 that 9016 doesn't have an appendage, which I
25 would think would be the first on the table,

1 but retains a minority access seat, whereas
2 9022 has an appendage. How did those numbers
3 compare with each other?

4 SENATOR GAETZ: Mr. Guthrie, could we ask
5 you to remark to that, please?

6 MR. GUTHRIE: And a point of
7 clarification: Are we looking at the
8 African-American district in the central
9 Florida area, or the Hispanic district?

10 SENATOR SMITH: Twelve, the
11 African-American.

12 SENATOR GAETZ: Please.

13 MR. GUTHRIE: The African-American
14 district in the proposed committee substitute
15 is 36.9 percent black VAP. In the Senator
16 Latvala amendment, it is 38.4 percent black
17 VAP. So it -- in terms of VAP, it is slightly
18 higher.

19 If we conduct the functional type
20 analysis, we see a similar slight increase of
21 the black percentage in the -- in Senator
22 Latvala's amendment. It is 58.2 percent of the
23 primary voters are black in Latvala's
24 amendment, versus 56.2 in the proposed
25 committee substitute.

1 So black voters constitute a majority in
2 the Democratic primary in both plans, but it is
3 a slightly higher majority in Senator Latvala's
4 amendment.

5 SENATOR GAETZ: While you have the podium,
6 are you prepared to remark to Senator Negron's
7 question?

8 MR. GUTHRIE: And that went to the
9 functional analysis as to the Hispanic
10 district, and what we can see in terms of
11 Hispanic participation or Hispanic percentage
12 of the Democratic primary election voters, in
13 both cases, Hispanics make up 28.3 percent of
14 the Democratic voters in the primary. In the
15 PCS, Hispanic -- or, excuse me, those Hispanics
16 also would be joined by blacks making up 19.7
17 percent of the Democratic primary election
18 voters, whereas in the Senator Latvala
19 alternative, blacks would be 19.1 percent of
20 your Democratic primary voters.

21 So a push on Hispanic primary voters and a
22 slight advantage in the PCS in terms of the
23 number of black primary voters. In both cases,
24 the Hispanic voters are predominantly
25 Democrats, and in both cases, Democrats are

1 successful by about the same numbers.

2 SENATOR GAETZ: Leader Smith to follow up.

3 SENATOR SMITH: Yes, could you tell us,
4 going back to compactness of 12, Gaetz plan as
5 compared to 9022 --

6 MR. GUTHRIE: Yes.

7 SENATOR SMITH: -- could you give us those
8 scores, the compactness scores of the three
9 tests that you applied?

10 SENATOR GAETZ: Mr. Guthrie, please.

11 MR. GUTHRIE: Thank you, Mr. Chairman.

12 In the PCS, the -- let's see. Let's
13 compare them one at a time. So the convex hull
14 in the PCS is .74, a pretty -- a very high
15 compactness score. In the Latvala alternative,
16 it is .45. The Reock score in the PCS is .40;
17 in the Latvala alternative, it is .25. The
18 Polsby-Popper perimeter test in the PCS is .31;
19 in the Latvala alternative, it is .09.

20 SENATOR GAETZ: Okay. Senator Siplin,
21 please.

22 SENATOR SIPLIN: I think that Senator --
23 well, my only question was, I asked the
24 question this morning of the attorney when we
25 were comparing Senator Gibson's district with

1 my district as it was when we passed it in the
2 Florida Senate, and I would like for him to
3 revisit his opinion regarding my question.

4 SENATOR GAETZ: Of course you may. Would
5 you please rearticulate the question, and Mr.
6 Bardos is all ears.

7 SENATOR SIPLIN: Yes. Initially when we
8 passed this bill out, there was -- my district
9 went to Sanford and Orlando, Florida. And
10 because of the decision by the Supreme Court,
11 you filed your amendment, and as a result, the
12 Sanford part of it was taken out, and I
13 questioned that -- your intent this morning as
14 to why would you take the Sanford part out of
15 District 12 and then do a more compact district
16 in terms of District 6 with Senator Gibson that
17 also had the same kind of -- different type of
18 shape and appendage. And I think Mr. -- the
19 attorney, Mr. Bardos, with his legal advice,
20 and I want him to share that advice again
21 today.

22 SENATOR GAETZ: Okay. Mr. Bardos, would
23 you like to respond?

24 MR. BARDOS: One thing that became clear
25 from the Court's opinion is that where we can

1 comply with Tier 1 and Tier 2 simultaneously,
2 we must do that. The Court invalidated
3 District 6 and District 29 because they were
4 not compact, and the Court concluded that
5 minority voting strength can be preserved in a
6 more compact district.

7 In regard to District 12, the Court did
8 not strike it down, but it did note that we did
9 not conduct the functional analysis there, and
10 it did remark to the extension of the district
11 into Sanford. It says that "The district
12 extends into two counties, running it in a
13 relatively narrow path on the west end of
14 Orlando and extending upwards and to the east,
15 hugging the top of the area with a few portions
16 reaching out." So in light of all of that, we
17 conducted the functional analysis. We believe
18 that the -- that the district as drawn in the
19 proposed committee substitute does satisfy the
20 Tier 1 standards, and that was staff's attempt
21 to reconcile Tier 1 and Tier 2 standards.

22 SENATOR GAETZ: All right. Senator
23 Thrasher, you are up, sir.

24 SENATOR SIPLIN: Senator --

25 SENATOR GAETZ: I'm sorry, were you

1 finished?

2 SENATOR SIPLIN: No, Chairman, I am just
3 reminding you that --

4 SENATOR GAETZ: Yeah, you are next. You
5 are next, I got you.

6 Senator Thrasher.

7 SENATOR THRASHER: Thank you, Mr.
8 Chairman, and I enjoyed listening to the
9 changes in District 12s and 13 and 14 and all
10 that. I notice, though, in comparing the maps,
11 that fairly significant changes were made to --
12 from the -- from the proposed committee bill in
13 District 8, 11 and 9. Can you tell me why
14 those districts, those three districts, needed
15 to be changed so fairly dramatically?

16 SENATOR GAETZ: And, Senator Latvala, did
17 either you or Senator Simmons wish to respond?

18 SENATOR LATVALA: I will respond.

19 SENATOR GAETZ: Yes, sir, Senator Latvala.

20 SENATOR LATVALA: I think --

21 SENATOR GAETZ: Senator, your mike --

22 SENATOR LATVALA: We need to get staff to
23 tell us that, because my instructions were that
24 this amendment was to comport with the
25 Chairman's amendment in every place except the

1 Orlando area that we were targeting in on. And
2 yesterday -- and I was told that it did.
3 Yesterday we discovered a fairly significant
4 area in District 24 which it didn't. And then
5 I was told that they made a change in Putnam
6 County, which I am not sure why that was
7 included in this amendment, but that is really
8 a question for staff to answer, because that
9 was not my request and not my wish and that was
10 included in the amendment that they prepared.

11 SENATOR GAETZ: Mr. Guthrie, could you --

12 A VOICE: Mr. Chairman, that was my
13 question, so you don't have to call on me.

14 SENATOR GAETZ: Okay. Mr. Guthrie, can
15 you respond to that, please?

16 MR. GUTHRIE: The person who was helping
17 most with really controlling the mouse as this
18 alternative was constructed was Mr. Schenckel
19 cell. Perhaps we could recognize him for a
20 minute to explain.

21 SENATOR GAETZ: Mr. Schenckel. Ben
22 Schenckel is one of our staff attorneys. You
23 are recognized.

24 MR. SCHENCKEL: Yes, sir, yes, Chairman.

25 The reason that 8, 9 and 11 are different

1 from the Chairman's amendment is based on the
2 fact that District 10 in this amendment is --
3 comes out on the west side, whereas in your
4 amendment, it comes out on the east side, and
5 this forces a rotation of population, which is
6 the reason that 8 then is forced up and then 9
7 can be -- come down completely into Putnam
8 County and then 11 then moves further south and
9 pushes into Lake County. But because 10 has to
10 be where it is, that rotation can't happen in
11 this amendment, just based on where District 10
12 falls on one side of Orlando or the other. And
13 so it was simply a decision based on
14 population. The population has to be
15 somewhere, and in your amendment, moving it to
16 the east side displaces that population that
17 would be in 8 up north and causes that
18 rotation, which is different from continuing to
19 have a District 10 on the west side of Orlando.

20 SENATOR GAETZ: But you realize,
21 Mr. Schenckel, it was not Senator Latvala's
22 intent necessarily to do this --

23 MR. SCHENCKEL: Yes, sir.

24 SENATOR GAETZ: -- and I would -- it was
25 simply a consequence of the other movements

1 that you made?

2 MR. SCHENCKEL: Yes, sir.

3 SENATOR GAETZ: Is that your testimony?

4 MR. SCHENCKEL: Yes, sir.

5 SENATOR GAETZ: Senator Latvala, does that
6 -- would you like to follow up on that, sir, at
7 all?

8 SENATOR LATVALA: No, we will let it go at
9 that.

10 SENATOR GAETZ: Okay. Senator Thrasher.

11 SENATOR THRASHER: It seems to me that we
12 are sacrificing simply population now for
13 compactness and geographical lines in these
14 three districts, and that causes me some
15 concern. I think -- I think if we listen to
16 what the Court says -- I understand Senator
17 Simmons, and great explanation on what you are
18 doing in District 10, but we are now impacting,
19 I think adversely, at least three other
20 districts.

21 SENATOR GAETZ: I think we have morphed
22 from questions to debate now. Is there further
23 debate -- I'm sorry, are there further
24 questions? Senator Gibson.

25 SENATOR GIBSON: Thank you, Mr. Chair.

1 And so did the -- did we do the formula to
2 test for the -- I don't know, it is getting
3 late -- the -- you know, the three --

4 SENATOR GAETZ: For compactness?

5 SENATOR GIBSON: Yeah, for the new --
6 newly drawn lines. And also, it looks as if 9
7 got a little more compact. Did it lose voters
8 also?

9 SENATOR GAETZ: Can you -- thank you very
10 much, Senator Gibson.

11 Mr. Guthrie, can you respond to that
12 factual question as to the compactness
13 analysis, the PCB, over and against the Latvala
14 amendment?

15 MR. GUTHRIE: Yes, I can. With District
16 10, in the PCB, the convex hull score is .79, a
17 very high score as -- and in the Latvala
18 alternative, it is the same, .79. In terms of
19 Reock or the dispersion ratio, in the PCB, it
20 is .41; in the -- the Reock ratio in the
21 Latvala alternative is .46, slightly higher.
22 And with Polsby-Popper, it goes the opposite
23 way. With the -- on District 10, it is .28,
24 the perimeter ratio for District 10 in the PCS;
25 in the Latvala alternative, it is .26.

1 SENATOR GAETZ: Are there further
2 questions on the Latvala amendment? Senator
3 Gibson, and then we will go to Senator
4 Montford.

5 SENATOR GIBSON: Thank you. Thank you,
6 Mr. Chair.

7 In the -- I know there is a distinct
8 minority population in Volusia County. How is
9 that dealt with in both of these maps? For
10 example -- well, they both seem to cut the
11 Bethune-Cookman University in half, but where
12 -- what happens with the minority communities
13 since Volusia seems to be dealt with a little
14 differently?

15 SENATOR GAETZ: Well, in fairness to the
16 amendment sponsor, would the amendment sponsor
17 care to comment on that, or do you want staff
18 to comment on that?

19 SENATOR LATVALA: You know, the decisions
20 about conforming the map to the Orlando area
21 and Seminole County area were made entirely by
22 staff in terms of where they cut the lines.

23 SENATOR GAETZ: All right, then, Mr.
24 Guthrie, could you respond to Senator Gibson's
25 question?

1 MR. GUTHRIE: Well, let's go into the
2 Daytona area and actually look at what -- where
3 the line goes. So in the Latvala alternative,
4 that is the map we are looking at right now,
5 the African-American areas of Daytona Beach are
6 in District 9, the district that goes to
7 Flagler, St. Johns and part of Putnam County.
8 In the -- and if we look at cities here, it
9 might be helpful, too. So most or all of the
10 City of -- it looks like all of the City of
11 Daytona Beach and Daytona Beach Shores, as well
12 as South Daytona, are in District 9 in the
13 Latvala alternative, with the -- let's see,
14 where do I go? Let me close some windows.
15 Well, 9008 -- okay, I am there. With not --
16 with the proposed committee substitute, we will
17 look at the Daytona area. We see there the
18 City of Daytona Beach in this map. Because of
19 the population difference that Mr. Schenckel
20 was talking about earlier is split, City of
21 Daytona is split, and the border that the
22 district follows here as it comes in on
23 International Speedway Drive, then heads north
24 on U.S. 1 and then east across the barrier
25 island, so it goes through the downtown area,

1 and that has the result of having some
2 African-American precincts in the District 9 to
3 the north and some in District 8 to the south.

4 SENATOR GAETZ: Senator Altman.

5 SENATOR ALTMAN: Thank you, mr. Chairman,
6 just quickly.

7 On the bottom of 8, that looks like an
8 appendage to me. Would that be considered an
9 appendage, or is that large enough to not be
10 considered -- it is right below District 13,
11 the appendage that comes over from Brevard over
12 into Orange County.

13 SENATOR GAETZ: Again, I think appendage
14 is a term of art, you know, perhaps with the
15 Court, and it is a bit in the eyes of the
16 beholder. Could I ask you, Senator Altman, to
17 maybe rephrase that, because -- you know, is an
18 appendage good, is it bad, is it big, is it
19 small? Are you asking if it is legally
20 compliant? What are you asking?

21 SENATOR ALTMAN: Yes, legally compliant.
22 Would that be considered under --

23 SENATOR GAETZ: All right.

24 SENATOR ALTMAN: Because it does sort of
25 look like it sticks out there.

1 SENATOR GAETZ: All right. Let's ask Mr.
2 Bardos if he has any comment on that, and then
3 Senator Latvala wishes recognition unless
4 someone else has a question at this point.
5 Senator Montford has a question, okay. Mr.
6 Bardos, take a shot.

7 MR. BARDOS: Well, I really don't know. I
8 don't think a law degree makes me anymore
9 equipped to judge one appendage from another.

10 SENATOR GAETZ: Analogy maybe.

11 MR. BARDOS: It is a little broader than
12 the other appendage. Also, it is bounded on
13 the south by the beach line and on the west by
14 the Econlockhatchee River. So it might be a
15 little bit different, but perhaps someone would
16 say that it is an appendage.

17 SENATOR GAETZ: Just a second. Senator
18 Montford.

19 SENATOR MONTFORD: Thank you, Mr. Chair.

20 This question may be somewhat out of
21 order, and if you think it is that way, I am
22 fine with that. The question I have is that
23 the underlying question here is will this --
24 will this pass muster? That is my question,
25 and I don't know who to answer it to, and,

1 again, it may not be, Mr. Chair, an appropriate
2 question at this time. If that's so, I will
3 pass on it.

4 SENATOR GAETZ: Well, why don't we do
5 this: Senator Latvala I think may be able to
6 help us address the conversation as it goes
7 forward, so I will recognize Senator Latvala.

8 SENATOR LATVALA: Thank you, Mr. Chairman.

9 It is obviously getting late in the
10 afternoon. This is a concept that we felt
11 strongly needed to be put in front of the
12 Senate, and at least in Committee. You know,
13 it is wonderful to have staff and, you know,
14 lawyers and a chairman and so forth, but we
15 also need to understand that, you know, when we
16 get a product put in front of us that we as
17 Senators have the final say over it, have the
18 ability to amend it, need to understand what it
19 is, have every right to make our contributions
20 in the way of amendments, and, you know, that
21 is what we were attempting to do. That is what
22 Senator Diaz de la Portilla was attempting to
23 do, and that is what Senator Simmons and I were
24 attempting to do with this.

25 You know, that said, there's obviously,

1 you know, a -- there are some concerns about
2 this, there are some questions about this, and
3 I think what we will do is withdraw this today,
4 but it could very well be that we will see this
5 again tomorrow in a floor amendment or
6 something similar to it, because, you know,
7 it's -- the staff recommendations that we saw
8 Saturday, that is one concept, and, you know,
9 that is their best efforts, but we as Senators
10 need to also -- we are the ones responsible for
11 making the final decision and we need to be
12 able to make our best efforts also.

13 SENATOR GAETZ: Without objection, show
14 the amendment withdrawn, and I think Senator
15 Latvala makes an excellent point, and so,
16 consequently, any amendments that are filed for
17 the floor, we will ask for a signature of the
18 sponsoring Senator to make sure that the entire
19 map and all of the consequences are understood
20 by the sponsoring Senator or approved by the
21 sponsoring Senator, and that the Senator owns
22 the amendment, so that there are absolutely no
23 -- there's no confusion about what may or may
24 not have been done by anybody else. So we will
25 take up amendments on the floor, and I will ask

1 the Rules Chair to support me that we will want
2 to see a sponsor's signature to know that the
3 amendment has been fully vetted by the sponsor.

4 Now, Senators, we will take up amendment
5 bar code 180520 by Senator Altman. And,
6 Senator Altman, you are recognized on your
7 amendment, sir.

8 SENATOR ALTMAN: Thank you, Mr. Chairman,
9 and I know we have had some opportunity to
10 talk, and I've looked at the language further
11 and I would like to say a few things maybe to
12 have some --

13 SENATOR GAETZ: Of course.

14 SENATOR ALTMAN: -- discussion, but I may
15 take the same -- so, you know, I have to say
16 that I strongly agree with the dissenting
17 opinion that the numbering of the
18 legislative -- Senator districts really has
19 nothing to do with an Amendment 16. As a
20 matter of fact, if you look -- if you read
21 Amendment 16, it talks about "An Amendment 16
22 in favoring or non-favoring incumbents relates
23 to district boundaries." It has nothing to do
24 with numbering. And that was just, I think, an
25 act of judicial activism. Of course, we are

1 stuck with that. I would -- it would have been
2 nicer if they would have followed the
3 Constitution with the numbering scenario.

4 I know the amendment, the joint resolution
5 as it stands today talks about using sort of a
6 lottery, a game of chance system, and, you
7 know, I personally don't particularly feel
8 comfortable with that. I don't think anywhere
9 in the Constitution there is a provision for us
10 to relegate our conscious decision to award
11 some sort of unknown lottery system, although
12 after speaking with the Chairman, I can
13 understand where he is coming from, given the
14 slippery slope that the Court has put us on now
15 by going outside of the Constitution and
16 drawing in the numbering system in their
17 ruling.

18 The amendment proposes that we just simply
19 do as we have done historically, that we number
20 districts consecutively from north to south.
21 That is pretty much what we have done
22 historically. As a matter of fact, the
23 Constitution requires that we number our
24 districts consecutively, that is really the
25 guidance that they give us, which means --

1 consecutive basically means some logical order,
2 some interrupted order. And if we were to go
3 to a lottery system, I don't think that is
4 necessarily what would happen.

5 Secondly, too, I fear that if we do a
6 lottery system, even/odd, that we only have
7 random -- we only have a random sample of 40
8 Senate districts, and there would be a
9 potential for clustering. We cannot be assured
10 that we would have an even distribution, so
11 certain regions could be treated fundamentally
12 differently.

13 I have had an opportunity to talk to a
14 number of the members. They voiced they would
15 like to have a little more time to look at the
16 effect of this amendment. So I would like to
17 TP the amendment, unless there's any questions
18 at the moment, giving us a little more
19 dialogue, and very well could bring it up
20 tomorrow or on the floor. It is a pretty
21 simple up or down thing. Mr. Chairman, I would
22 like to have an opportunity to speak with you a
23 little further, too, because I have thought of
24 some other options.

25 SENATOR GAETZ: Absolutely. Without

1 objection, show the amendment temporarily
2 postponed.

3 We are now back on the bill, and Senator
4 Thrasher, you are recognized.

5 SENATOR THRASHER: Yes, sir. In regard to
6 what the Senator just said, I think when you
7 read the opinion, particularly on page 184, the
8 final conclusion, right before the conclusion,
9 the Court says that, "Finally, we declare that
10 the numbering system" -- or scheme, as they
11 said it -- "is invalid because it is intended
12 to benefit incumbents by making them eligible
13 to serve for longer periods of time than they
14 would have otherwise been eligible to serve."
15 So, obviously, this is a very, very important
16 thing to the Court. And while we have a
17 numbering system based on the proposal that is
18 before us, seems to me that further thought, as
19 Senator Altman said might be appropriate. So,
20 Mr. Chairman, I would move that the Chair
21 prepare a floor amendment that provides a
22 process by which the Senate can achieve an
23 incumbent-neutral numbering system in the
24 pending resolution.

25 SENATOR GAETZ: You have heard the motion.

1 Are there questions on the motion?

2 SENATOR RICH: Mr. Chairman?

3 SENATOR GAETZ: Leader Rich.

4 SENATOR RICH: Thank you, Mr. Chair.

5 I actually have a little different view
6 than what Senator Altman stated. I really
7 don't think it is judicial activism. Actually,
8 I think we have competing amendments. We have
9 an amendment passed by the voters that said
10 eight years, eight is enough.

11 So I would like to suggest that as we move
12 ahead -- I think Senator Thrasher has a very
13 good suggestion, but I think that we should
14 look at the fact that the Court would like us
15 to figure out a way to observe the other
16 amendment in our Constitution by having as many
17 Senators as possible serve eight years.

18 SENATOR GAETZ: Thank you, Leader Rich.
19 There were a couple of other people who had
20 questions. Senator Latvala, and then Senator
21 Storms.

22 SENATOR LATVALA: Mr. Chairman, I would
23 like to just have a little discussion about
24 what exactly Senator Thrasher means with regard
25 to the Chair doing an amendment. Does that

1 mean we are obligating ourselves at this point
2 to support what the Chair does? Does that mean
3 that there will be an opportunity to substitute
4 something for the amendment that you come up
5 with? I mean, you know -- and let's just be
6 blunt about it. There's a lot of sentiment in
7 this Senate that a lottery is not what we want
8 to see. There's a lot of sentiment that you
9 can sequentially number with a pencil, without
10 lifting off the paper, and some -- there's
11 going to be some winners and losers. And I
12 just would want to make sure with this motion
13 that we are not obligating ourselves in some
14 fashion that we can't have a further full
15 conversation about this issue on the floor.

16 SENATOR GAETZ: Well, let me speak for
17 myself. If the motion passes, the motion
18 would -- as I understood it is that I would
19 prepare an amendment, not that I would prepare
20 a dispositive solution that nobody could
21 disagree with. Any amendment that is prepared
22 is presented to the full Senate, is questioned,
23 is debated and is voted up or down, and that is
24 the way I would expect we would proceed, but I
25 yield -- recognize Senator Thrasher, he is the

1 motion-maker.

2 SENATOR THRASHER: No, I think that is
3 exactly right. My concern, again, is that it
4 be incumbent-neutral. What kind of system,
5 Senator Latvala -- your system may be the
6 better one, I don't know. It seems to me,
7 though, that we are -- when we get to the floor
8 after we have gone through the amendatory
9 process, we ought to have a map to vote on, and
10 we ought to vote on that map, and then we ought
11 to come up with a system then that it places
12 the districts, as the Court suggested, in an
13 incumbent-neutral numbering system on the
14 resolution so that -- to me, that gives us the
15 best possible opportunity, if you will, to
16 succeed in the Florida Supreme Court both on
17 the resolution, as well as -- as well as the
18 numbering system.

19 SENATOR GAETZ: Okay. Senator Latvala to
20 follow up, and then Senator Storms.

21 SENATOR LATVALA: And I may have a couple
22 -- you know, I mean, I would like to have a
23 discussion about this, and there might be more
24 than one question, you know.

25 My question is that if we -- as Senator

1 Thrasher says here, we vote on a plan, then we
2 have a motion on the numbering, okay. What if
3 the plan that is determined is going to be a
4 sequential numbering and then we are going to
5 leave town and somebody is going to
6 sequentially number it? I mean, my concern is
7 on Thursday, we ought to know what the numbers
8 of the districts are on the plan when we vote
9 for it and -- as opposed to leaving it and
10 delegating it to staff or delegating it
11 anywhere else. Whether or not we have the
12 lottery, we ought to do it on Thursday. If we
13 determine that we want it done sequentially, it
14 needs to be done on Thursday. I mean,
15 normally, when you vote on the map itself,
16 there's numbers on it, and that is part of the
17 bill that you adopt are the numbers. So it is
18 just -- it is kind of like a no man's land here
19 to -- to me, at least, in how this is going to
20 work.

21 A VOICE: Mr. Chairman?

22 SENATOR GAETZ: Let's take it in order.
23 We have other people who have asked for
24 recognition. Senator Storms is next. We will
25 get to everybody. Senator Storms.

1 SENATOR STORMS: Thank you. Thank you,
2 Mr. Chair.

3 I don't disagree that -- I guess I am just
4 questioning -- I have a couple of issues, Mr.
5 Chair. One is I guess I am just questioning
6 what exactly is meant by the motion that is on
7 the floor -- that is before us right now,
8 because the Chair can file -- the Chair is the
9 Chair, so you can file any amendment that --
10 you don't need our permission to do that,
11 because, you know, you are the Chair. So that
12 is issue one.

13 Issue two is any other member can file any
14 amendment that we need to.

15 And then issue three is I absolutely think
16 that whatever -- whatever map that we wind up
17 voting on when we are done here should have
18 both the map and the numbers taken care of,
19 because that is what was referred back to us
20 from the Supreme Court.

21 That being said, as I have said to you,
22 Mr. Chair, and as I have said on the record
23 previously, I have a number of concerns with
24 the lottery format for a variety of reasons,
25 and I will just specifically enumerate them

1 again.

2 Number one, I would like to be able to
3 take the map to -- you know, to your neighbor,
4 to my neighbor, to anybody's neighbor, Joe
5 Smith, and say, "Here is the map," and he would
6 be able -- he or she would be able to look at
7 it and see that there's some rhyme or reason to
8 the numbering of the map, and I am concerned
9 that with some sort of random system, that it
10 looks capricious and arbitrary to John Q. or
11 Joanne Q. Public. So that is issue one.

12 Issue two is that previously, before we
13 had any motive at all, before anybody could
14 assign motive to us as to term limits,
15 previously the map was sequentially numbered.
16 It would seem to me that we would benefit by
17 going back to what we did previously. That is
18 my understanding.

19 Issue three is if you do a random system
20 and somehow, who knows why or how, but somehow
21 one particular group, be it the Hispanic
22 minority or the African-American minority or
23 anybody else as a block, that group is assigned
24 either two year or four year, you are not going
25 to be able to convince anybody that the fix --

1 we are not going to be able to convince anybody
2 that that didn't happen by intent, that the fix
3 wasn't in.

4 And then issue four, which I do think,
5 although it is political, I think it is -- we
6 have to consider this as an important point for
7 the benefit of the state of Florida, and issue
8 four is this: If you have a whole geographic
9 location that just by luck of the draw, by
10 random numbers assigned, all get either four or
11 two years, it doesn't matter which, you just
12 pick it -- for the purposes of my discussion, I
13 will say that south Florida gets all four
14 years -- what happens from -- everybody there
15 gets assigned a four-year term. What happens
16 is, for the benefit of those south Florida
17 representatives, their power is concentrated,
18 because they are there longer in the beginning
19 years, but when they all rotate off, then their
20 power is diluted. In either case, that does
21 not inure to the benefit of all Floridians
22 across the state. You are more likely to
23 stagger that power, which is why we have the
24 staggered limits. That is the intent of making
25 sure that everybody isn't up to run at the same

1 time. And it is because I think that is more
2 faithful to that intent, I think that we run
3 the risk of violating that by going through --
4 by going to a random system. We do not ever
5 want for the benefit of the people of the state
6 of Florida to have central Florida all have the
7 same years, to have the Panhandle all have the
8 same years or to have south Florida all have
9 the same years, because it does not inure to
10 the benefit of good policy-making for the state
11 of Florida, and that is why we have staggered
12 terms, that is the rationale for that.

13 So for those four reasons, Mr. Chair, I
14 would not argue for a random -- for -- you
15 know, for a random assignment of the numbers;
16 instead, I would argue instead for or advocate
17 instead for an assignment -- just an assignment
18 by the numbers, you just write the numbers down
19 and then you announce the way you -- sometimes
20 you are going to have to turn the bend and go
21 back. There are going to be some districts
22 that intrude into another district, and so you
23 are going to -- you may not exactly go right
24 across the state, but the way you fix that, in
25 my opinion, is you announce before you start

1 making your numbers, you say, "Okay, here's how
2 we are going to do it, this is the rationale we
3 are using, and now we are just going to put
4 pencil to paper and number across the state."

5 And that is my view, Mr. Chair. Thank you
6 for your indulgence.

7 SENATOR GAETZ: Absolutely, and maybe we
8 take a moment or two, I think Senator Latvala
9 is right, I know a lot of people want to talk
10 about this, maybe we just take a breath here
11 and let me -- if you look at the PCB, which is
12 before you, look at Section 2. Section 2 is
13 pretty clear: "The 40 Senatorial districts of
14 the state shall be renumbered based on a
15 random, incumbent-neutral process of assignment
16 conducted in public."

17 First let me say a word or two about the
18 problem, and then let me offer a perspective at
19 least on the solution. Here is the problem:
20 The problem is that the Supreme Court has
21 imputed motive to the numbering system and the
22 assignment thereby of terms, which was in the
23 -- in the act, the joint resolution, which the
24 Legislature passed. The Supreme Court went on,
25 I think, for eight pages saying that there

1 needed to be an incumbent-neutral system, not a
2 system that is designed or that could be
3 interpreted because of its effect as having a
4 preference for anyone. And, therefore, that is
5 why many of you with whom I have spoken
6 individually, I have asked, do you have a plan,
7 do you have a suggestion, do you have a system?
8 And Senator Altman, to his credit, has come up
9 with one. But we have a real problem. The
10 problem is we cannot have a result which can
11 then be misinterpreted as to its intent. And,
12 you know, a lot of us have struggled with this.
13 Anytime you pick up the pencil and try to
14 figure out how to do this, any system has the
15 risk of having intent imputed to it, except a
16 random system.

17 Now to Senator Storms' points. Does a
18 random system mean non-sequential? No. A
19 random system could simply mean that it is by a
20 random selection, an incumbent-neutral
21 selection, that it is determined whether the
22 district that I live in will be an
23 even-numbered or an odd-numbered district.
24 There is nothing about a random system that
25 requires it to be non-sequential when you look

1 at the map. There is nothing about the system
2 that requires it to be weird or odd or
3 difficult to explain at the Magnolia Grill with
4 respect to the map. Let us give you an example
5 or two about what a random system might look
6 like. That may draw even more criticism and
7 even more concern, and we will be happy to take
8 it. But let me just say that having lived
9 through this process now for many months, and
10 having heard thousands of people speak and
11 having heard hundreds of hours of testimony, I
12 don't believe that we should vote for and send
13 to the Supreme Court a system where motive can
14 be imputed, where it can be inferred that there
15 has been some sort of intent to get a result
16 that favors or disfavors any incumbent. I
17 think if we do that, there's going to be an
18 aroma about our proposal that will then
19 implicate the rest of the proposal,
20 notwithstanding the fact that there are those
21 on this panel who believe the Supreme Court
22 shouldn't have talked about it in the first
23 place. The fact is they did, and our job is to
24 comply with the Court.

25 Now, Mr. Guthrie, you and I have talked

1 about a -- how a random system would work, and
2 I would like if you would please explain it.
3 It has been discussed with the Attorney
4 General, who is willing to oversee it to make
5 certain that it would be truly
6 incumbent-neutral and truly objective. Mr.
7 Guthrie, could you as simply as possible
8 explain how a random system might work? And I
9 would ask you to hold your questions until he
10 explains, and then everyone can have an
11 opportunity to talk. May I please have --

12 A VOICE: We are not going to -- with all
13 due respect, we are not going to have time to
14 talk. We have a time certain vote.

15 SENATOR GAETZ: Well, let's give Mr.
16 Guthrie a couple of minutes, because it may --
17 you may decide to vote no.

18 A VOICE: Well, I may have to if we don't
19 get the numbering part. This is my question,
20 if I may do that.

21 SENATOR GAETZ: Sure.

22 A VOICE: I love the maps. I would like
23 to vote yes on the maps. I disagree with the
24 numbering system, and so far I am in the just
25 trust me, we will tell you later mode.

1 SENATOR GAETZ: No, no, no. If you will
2 just allow an explanation, then you can decide
3 to vote no for a reason.

4 A VOICE: Mr. Chairman, I also would like
5 to -- it appears to me, and you -- please
6 straighten me out if this is wrong. The
7 sequential numbering does not necessarily have
8 to be related to the lottery.

9 SENATOR GAETZ: That is exactly correct.

10 A VOICE: And I am asking you why we can't
11 have a map with sequential, as close as you can
12 get, numbers, and however everyone decides to
13 do the four years, the eight or ten, whatever,
14 that is a different situation, but if we had a
15 map with sequential numbers, that would be the
16 first thing. Then we could take an up or down
17 vote. How the selection is made for the eight
18 or ten years is something separate.

19 SENATOR GAETZ: Well -- and if you will
20 permit, there is a way to have a random
21 determination as to whether one has an odd or
22 even district number and still have sequential
23 numbering. Could we just allow Mr. Guthrie --

24 A VOICE: Could I ask a procedural
25 question?

1 SENATOR GAETZ: Sure.

2 SENATOR LATVALA: Okay. If we have this
3 in the bill, why do we need Senator Thrasher's
4 motion?

5 SENATOR GAETZ: We -- I don't know. We
6 may not. We may not.

7 SENATOR LATVALA: Well, that is my
8 question. In other words, if this is in the
9 bill, and this bill is going to be voted out of
10 this Committee today, why do we need a further
11 motion on the issue?

12 SENATOR THRASHER: All I was trying to do,
13 Senator Latvala, is do exactly what everybody
14 is suggesting here, like we did with the PCB,
15 authorize the Chairman to come up with an
16 amendment, an amendment for the floor that
17 basically says that we are going to number the
18 districts in an incumbent-neutral way. If we
19 want to do it in the bill now, I am more than
20 happy to do that. I certainly don't want, as
21 Senator Storms suggested, we leave here without
22 a numbering system intact. We definitely want
23 to do that. How we do it is -- this is just a
24 suggestion that if we are not prepared to do it
25 today, we authorize the Chairman to come up

1 with an amendment, we debate it on the floor.
2 If you want to make changes to it just like we
3 have done today, we will make changes to it. I
4 think that is -- that was my intent, anyway,
5 Mr. Chairman.

6 SENATOR LATVALA: Mr. Chairman?

7 SENATOR GAETZ: Yes, Senator Latvala,
8 question.

9 SENATOR LATVALA: If Senator Altman had a
10 mechanism --

11 SENATOR GAETZ: Uh-huh.

12 SENATOR LATVALA: -- and you asked him to
13 withdraw the amendment, okay, and my
14 understanding is somebody asked him to
15 withdraw the amendment, that would have allowed
16 us to vote on a mechanism. Now we are 14
17 minutes before the end of the meeting, and you
18 want us to sort of -- and then when we go to
19 the floor, we're in a position where, you know,
20 we have something that we have authorized and
21 it will be a defense mode against anybody that
22 is attacking whatever you come up with, just
23 being blunt.

24 SENATOR GAETZ: No, let's not do that.

25 Obviously this whole issue is an issue of grave

1 concern. Leader Rich has made her point that
2 whatever method we come up with, it ought to be
3 respectful of the Constitution, and I think
4 that Senator Lynn has made an excellent point,
5 as has Senator Storms, that we have to have a
6 sequential system. Clearly, the hour grows
7 late, the day is long, the issue is important,
8 I have made my case as best I can that this
9 ought to be done in a truly random way without
10 preference being able to be inferred, and,
11 therefore, I would like to ask Senator Dean if
12 he would please move to reconsider his motion.
13 We will all be here at eight o'clock tomorrow
14 morning, and we can have a long and involved
15 and thorough discussion of the numbering system
16 and answer anybody and everybody's question
17 about it. We can -- we can deal with it in a
18 can complete and thorough way tomorrow.

19 Senator Dean, would you move to
20 reconsider?

21 Senator Dean moves to reconsider the time
22 certain vote.

23 All in favor of the motion, say aye.

24 (Chorus of ayes.)

25 SENATOR GAETZ: All opposed to the motion.

1 The motion is carried, and Leader Rich
2 moves we rise.

3 (Whereupon, the proceedings were
4 concluded.)

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C E R T I F I C A T E

STATE OF FLORIDA)

COUNTY OF LEON)

I hereby certify that the foregoing transcript is of a tape-recording taken down by the undersigned, and the contents thereof were reduced to typewriting under my direction;

That the foregoing pages 155 through 374 represent a true, correct, and complete transcript of the tape- recording;

And I further certify that I am not of kin or counsel to the parties in the case; am not in the regular employ of counsel for any of said parties; nor am I in anywise interested in the result of said case.

Dated this 4th day of April, 2012.

CLARA C. ROTRUCK

Notary Public

State of Florida at Large

Commission Expires:

November 13, 2014