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12 SENATE REAPPORTIONMENT COMMITTEE HEARING

13 WEDNESDAY, MARCH 14, 2012

14 3:30 P.M.

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22 Transcribed by:

23 CLARA C. ROTRUCK

24 Court Reporter

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

2                   SENATOR GAETZ: Members of the Senate  
3                   Reapportionment Committee, please take your  
4                   seats so that we can be about our father's  
5                   business, and those who are here as visitors,  
6                   please take your seats as well.

7                   The Senate Committee on Reapportionment is  
8                   called to order. The administrative assistant,  
9                   please call the 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 Evers?

2 SENATOR EVERS: Here.

3 THE CLERK: Senator Flores?

4 Senator Garcia?

5 SENATOR GARCIA: Here.

6 THE CLERK: Senator Gardiner?

7 SENATOR GARDINER: Here.

8 THE CLERK: Senator Gibson?

9 SENATOR GIBSON: Here.

10 THE CLERK: Senator Hays?

11 Senator Joyner?

12 SENATOR JOYNER: Here.

13 THE CLERK: Senator Latvala?

14 SENATOR LATVALA: Here.

15 THE CLERK: Senator Lynn?

16 SENATOR LYNN: Here.

17 THE CLERK: Senator Montford?

18 SENATOR MONTFORD: Here.

19 THE CLERK: Senator Negron?

20 SENATOR NEGRON: Here.

21 THE CLERK: Senator Rich?

22 SENATOR RICH: Here.

23 THE CLERK: Senator Sachs?

24 SENATOR SACHS: Here.

25 THE CLERK: Senator Simmons?

1 SENATOR SIMMONS: Here.

2 THE CLERK: Senator Siplin?

3 SENATOR SIPLIN: Here.

4 THE CLERK: Senator Smith?

5 SENATOR SMITH: Here.

6 THE CLERK: Senator Sobel?

7 SENATOR SOBEL: Here.

8 THE CLERK: Senator Storms?

9 SENATOR STORMS: Here.

10 THE CLERK: Senator Thrasher?

11 SENATOR THRASHER: Here.

12 THE CLERK: Senator Wise?

13 SENATOR WISE: Here.

14 THE CLERK: Quorum is present.

15 SENATOR GAETZ: Thank you very much, and  
16 good afternoon, Senators. It seems like we  
17 just saw each other, didn't we, on the floor,  
18 like a couple of days ago? Good afternoon, and  
19 I would like to thank you for being with us  
20 today, and I would also like to welcome on  
21 behalf of the Committee our two newest members,  
22 Leader Smith and Senator Wise. So thank you  
23 both for being here, and we appreciate your  
24 contribution to the Committee.

25 Senator Storms on the floor made several

1 recommendations as to communication with the  
2 public, and I know that our professional staff  
3 was paying close attention, and I would ask you  
4 on behalf of the Committee to effectuate the  
5 representations that I made to Senator Storms  
6 on the floor.

7           The purpose of our meeting today is to  
8 hear a professional staff presentation about  
9 the Supreme Court opinion which this special  
10 session responds to. The presentation will  
11 cover where we are in the process and what the  
12 calendar looks like moving forward. We will  
13 also cover the Court's interpretation of Tier 1  
14 and Tier 2 standards in the Constitution, and  
15 the Court's conclusions in the majority opinion  
16 regarding the Senate plan and the districts  
17 which the Court invalidated.

18           Are there any questions about our business  
19 for this day? If not, I will turn to Mr.  
20 Guthrie and ask him to begin our presentation.

21           Mr. Guthrie, you are recognized.

22           MR. GUTHRIE: Thank you, Chairman Gaetz,  
23 and welcome to the Extraordinary Apportionment  
24 Session.

25           You sit where nobody has ever sat before.

1 Since the Constitution was adopted by the  
2 people of Florida in 1968, we have had Article  
3 III, Section 16, which provides the process for  
4 adoption and review of redistricting plans.

5 Every time before we have followed what is the  
6 normal course of adopting a resolution at the  
7 regular session: The Attorney General  
8 petitioning the Supreme Court, the Supreme  
9 Court entering its judgment that the plans were  
10 valid, and the Joint Resolution then being  
11 binding on all citizens of the state.

12 This time, for the first time ever, the --  
13 we are taking a detour. The Supreme Court,  
14 during its initial review, determined that  
15 certain elements of the Senate plan were not  
16 valid. So on the chutes and ladders diagram  
17 that we looked at several times early on, we  
18 are taking this detour. And as we all know,  
19 within five days, the Governor has reconvened  
20 the Legislature in a 15-day extraordinary  
21 session. It is our mandatory and sole duty  
22 during this session to come up with a joint  
23 resolution conforming with the judgment of the  
24 Court.

25 If the Legislature is successful in

1 adopting a -- such a joint resolution  
2 conforming with the judgment of the Court, then  
3 the joint resolution goes back to the Supreme  
4 Court through the Attorney General, and within  
5 30 days, again the Supreme Court will render  
6 its opinion as to whether or not the new  
7 resolution adopted by the Florida Legislature  
8 is valid.

9           If the Supreme Court determines that it is  
10 valid, then the new plans will take effect  
11 subject to pre-clearance by the U.S. Department  
12 of Justice. If the Supreme Court determines  
13 that the joint resolution again is invalid,  
14 then the job falls to the Supreme Court to come  
15 up with a remedial plan for Senate districts in  
16 the state.

17           If the Legislature fails to adopt a joint  
18 resolution of apportionment during the 15-day  
19 regular -- extraordinary session, then within  
20 15 days, the Attorney General petitions the  
21 Court to make the apportionment. So that is  
22 where we are in terms of the process that is  
23 set out in the Florida Constitution.

24           Let's put that schedule on a calendar. So  
25 we had the regular session starting

1           January 10th. The Legislature, within 31 days,  
2        was able to complete its work and put the joint  
3        resolution before the Supreme Court for its  
4        initial review. The Supreme Court took 29 of  
5        the 30 days allotted to the Court by the  
6        Constitution to make its review, and we heard  
7        back last Friday that the Supreme Court found  
8        the House plans to be valid and found certain  
9        elements of the Senate plan to be invalid.

10           So we find ourselves today at the first  
11        day of a 15-day extraordinary session that will  
12        end on the 28th of March. If -- and after that  
13        adjournment with the adoption of a new joint  
14        resolution, the Attorney General has 15 days to  
15        Petition the Supreme Court to review the second  
16        resolution of apportionment. That time will  
17        run April 12th. The Supreme Court again has 30  
18        days to determine whether the districts are  
19        valid, and the -- so that gets us all the way  
20        to the second week in May of 2012, and then the  
21        U.S. Justice Department still must pre-clear  
22        the plans that come out of the state process.  
23           So rather than the United States Department of  
24        Justice having the 60 days that they prescribe  
25        by rule is required for pre-clearance review,

1           there would only be 19 days left before  
2           candidate qualifying starts on June 4th. So it  
3           is a very, very tight and compressed schedule.  
4           It points to us the importance of the  
5           responsible action that the Florida Legislature  
6           took in starting its session so early, in  
7           moving with unprecedented speed to pass a joint  
8           resolution out of the Senate, and I think we  
9           have put ourselves in a situation where it  
10          still will be possible for us to conduct  
11          orderly elections for 2012.

12           SENATOR GAETZ: And, Mr. Guthrie, if we  
13          could just stop there. Are there questions  
14          about the schedule? Questions about the  
15          schedule or about what Mr. Guthrie has just  
16          explained? If not, why don't you proceed, sir.

17           MR. GUTHRIE: As we have at almost all of  
18          our meetings, we start and return again to the  
19          constitutional standards for redistricting.  
20          Article III, Section 16, provides for Senate  
21          Districts 30 to 40 that are contiguous, and the  
22          new Article III, Section 21, provides that --  
23          the Tier 1 and Tier 2 standards that we are  
24          going to be going over in greater detail. We  
25          are going to look at those standards through

1           the lens that the Supreme Court provided us  
2           through the conclusions they enunciated in  
3           their opinion.

4           Let's look at those standards. The first  
5           of those is no plan or district shall be drawn  
6           with the intent to favor a party or an  
7           incumbent. What the Supreme Court concluded in  
8           its opinion is that the effects of the plan,  
9           the shape of district lines and the  
10          demographics of an area are all factors that  
11          serve as objective indicators of intent. So  
12          they believe that you can look at the map and  
13          statistics about the map, and from that  
14          determine what the intent of the map-drawer  
15          was. Lack of compactness, contiguity or  
16          population equality can serve as indicia of  
17          improper intent. So that is -- that is the  
18          conclusions of the Supreme Court regarding the  
19          first of the Tier 1 standards.

20           The second of the Tier 1 standards is  
21          providing minority voting opportunities. The  
22          Supreme Court concluded that the Legislature  
23          cannot eliminate majority-minority districts or  
24          weaken other historically performing minority  
25          districts where doing so would actually

1 diminish a minority group's ability to elect  
2 its preferred candidates. Some opponents to  
3 the Legislature's plan alleged that the plan  
4 was retrogressive, that it caused a  
5 diminishment of minority voting opportunities.  
6 The Supreme Court did not in its facial review  
7 agree with those objections. And they also --  
8 the opponents also alleged that certain of our  
9 districts were packed, and the Supreme Court  
10 did not agree with that conclusion either.

11                 The Supreme Court did add, though, that  
12 functional analysis of these districts to  
13 determine whether or not minority candidates  
14 are going to be successful requires that you  
15 have political data and that you consider how  
16 the minority group has voted in the past. So  
17 they did make a finding that there is a desire  
18 for these functional analyses using political  
19 data.

20                 SENATOR SIPLIN: Mr. Chairman?

21                 SENATOR GAETZ: Senator Siplin for a  
22 question.

23                 SENATOR SIPLIN: Yes, sir. What does  
24 functional analysis mean?

25                 MR. GUTHRIE: Functional analysis -- and

1           we can turn to the Court's opinion, and it is  
2           particularly on page 63 where Justice Pariente  
3           sort of spells out what she is thinking on  
4           that, but it is basically looking at the  
5           registered -- registration figures for minority  
6           voters in the district and how elections turn  
7           out in those districts. So the combination of  
8           looking at registration and how elections are  
9           decided, not simply using the voting age  
10           population of districts to stand for whether  
11           minority candidates will have opportunities or  
12           not.

13           SENATOR GAETZ: Senator Sobel.

14           SENATOR SOBEL: Thank you, Mr. Chair.

15           In breaking out Tier 1 standards, are they  
16           equal, intent to favor a party or incumbent,  
17           and the other Tier 1 standard, minority voting  
18           opportunities, are they equal in weight or  
19           priority according to the Court, or is the main  
20           standard intent to favor party or incumbent?

21           MR. GUTHRIE: Yes, subsection c of the new  
22           constitutional amendment says that the --  
23           within a -- within subsection a and within  
24           subsection b, so within Tier 1, the standards  
25           are of equal weight. Within Tier 2, the

1 standards are of equal weight, but Tier 2  
2 standards are secondary to your Tier 1  
3 standards.

4 SENATOR SOBEL: Thank you.

5 SENATOR GAETZ: Leader Rich.

6 SENATOR RICH: Thank you, Mr. Chair.

7 SENATOR GAETZ: Leader, could you pull  
8 your mike a little closer, please, ma'am?

9 SENATOR RICH: In light of the question  
10 about functional analysis and in light of what  
11 is in the actual opinion talking about the  
12 election history and voting patterns within the  
13 jurisdiction, voter registration and turnout  
14 information and other similar information are  
15 very important to an assessment of the actual  
16 effect of a voting district. So I guess my  
17 question is, is there a plan at this point,  
18 given what is in this opinion, to do some  
19 functional analysis test such as the House did,  
20 and if we are planning that, what -- you know,  
21 what would it look like?

22 SENATOR GAETZ: Mr. Guthrie.

23 SENATOR RICH: Would it be the same as the  
24 one that the House did, or something else?

25 MR. GUTHRIE: We are intending to do a

1           functional analysis similar to what the House  
2         did, and I -- you can presume that it will look  
3         similar to that analysis and kind of follow the  
4         guidance provided by the Supreme Court in the  
5         passage you read as to the relevant factors.

6           SENATOR RICH: Okay. Thank you.

7           SENATOR GAETZ: Other questions or  
8         comments at this point? If not, Mr. Guthrie,  
9         please continue.

10          MR. GUTHRIE: Okay. The third of the Tier  
11         1 standards is contiguity. The Supreme Court  
12         reaffirmed its decision from multiple decades  
13         previous that a district is not contiguous if  
14         part of the district is isolated from the rest  
15         of the district by territory of another  
16         district. So if it is in two pieces, then it  
17         is not contiguous, or if two parts of the  
18         district touch only at a right angle. If they  
19         just meet at a point, but don't have a land or  
20         water corridor between the two pieces, that  
21         would not be contiguous. And there really were  
22         no issues on review about contiguity.  
23          Everybody agreed that the plans being  
24         considered were contiguous in terms of that  
25         definition.

1                   So turning to the Tier 2 standards, among  
2 those is that districts shall be as near in  
3 population as practicable. What the Supreme  
4 Court concluded is that the equal population  
5 requirement must give way to Tier 1 standards  
6 and must be balanced with other Tier 2  
7 considerations. What that means is that the --  
8 contrary to the precise mathematical equality  
9 that you achieved with your congressional plan  
10 and that some were arguing ought to also apply  
11 to Senate and House districts, the Supreme  
12 Court found that deviations for state  
13 legislative districts were appropriate and were  
14 constitutional.

15                  The Court did provide guidance, though,  
16 that any deviation from the goal of  
17 mathematical precision must be based upon  
18 compliance with other constitutional standards.  
19 So if it is necessary to have deviations, and  
20 the House plan had deviations almost as high as  
21 four percent total deviation, that is  
22 permissible if it is being done for the purpose  
23 of keeping counties whole, keeping cities  
24 whole, following political and geographic  
25 boundaries, et cetera.

1               Okay. Tier 2 standards, the second of  
2 those is compactness. The Court determined in  
3 its conclusions that compactness means  
4 geographical, not functional compactness. We  
5 had some discussions of that term in this  
6 meeting. The Senate took a position that  
7 functional compactness was what the  
8 Constitution required. The Supreme Court  
9 concluded that compactness means the shape  
10 needs to be -- well, I will go into the second  
11 bullet here. The shape needs to be logically  
12 drawn and cannot be -- and districts that are  
13 bizarrely-shaped should be avoided, unless  
14 necessary for purposes of achieving a Tier 1  
15 objective.

16               And then finally, that compactness can be  
17 evaluated both visually and by employing  
18 standard mathematical measurements. So the  
19 Court, in its opinion, made reference to Reock  
20 scores and to convex hull scores. In some of  
21 the briefs and other materials that were  
22 submitted to the Court, parties also talked  
23 about a Polsby-Popper ratio. What those three  
24 mathematical formula basically relate to --  
25 Reock is you fit the district inside of a

1 circle, okay. Whatever shape the district is,  
2 you make it fit into the smallest circle that  
3 will contain that district, and then you take  
4 the ratio of the area of the district to the  
5 area of the circle, and the higher the number,  
6 the more compact the district is presumed by  
7 that measure to be. Convex hull is similar,  
8 except instead of putting a circle around the  
9 district, what you do is you put a rubber band  
10 around the district. So you stretch a rubber  
11 band around the outside of the district, you  
12 determine the area of that shape and you  
13 compare it to the area of the district, and  
14 that, again, gives you a number between zero  
15 and one. The closer to one it is, the higher  
16 your compactness. And Polsby-Popper is the  
17 third measure of that type. What it does is  
18 takes the perimeter of the district, it -- so  
19 you measure the boundary of the district all  
20 the way around, you expand that out to make a  
21 circle and then you determine the area of the  
22 circle -- that circle as the divider and the  
23 area of the district. So they are very similar  
24 measures of geometric compactness, and the  
25 Court said that compactness can be evaluated

1 both visually, simply looking at the district,  
2 and by employing standard mathematical  
3 measurements by which they met --

4 SENATOR GARDINER: Mr. Chair?

5 SENATOR GAETZ: Leader Gardiner for a  
6 question, please.

7 SENATOR GARDINER: Sorry, Mr. Chairman, we  
8 have a mechanical malfunction back here. But,  
9 John, to the question of compactness, everybody  
10 has a legal opinion as to what the Supreme  
11 Court said, and for those of us that are not  
12 attorneys, that is kind of dangerous, but there  
13 are some people that have argued that  
14 compactness has now been put essentially to a  
15 Tier 1 level. So I am interested in your  
16 opinion, also the attorney's opinion, regarding  
17 compactness, but the other issue that has come  
18 up is regarding the minority access seats, that  
19 it would appear that the Supreme Court is  
20 looking at not just the number of minorities,  
21 but the political performance of those  
22 minorities. And if that is the case, what  
23 threshold do you have to hit in order to get  
24 that political performance? So if you have a  
25 minority access seat that's say 50 percent or

1           52 percent, if the Court is giving you some  
2         flexibility, can you bring it down to 43 or  
3         46 percent, but it is still going to perform at  
4         the level -- have y'all and the attorneys  
5         looked at compactness compared to minority  
6         seats in that respect?

7           SENATOR GAETZ: Mr. Guthrie, and then we  
8         may want to ask Mr. Bardos to comment as well.

9           MR. GUTHRIE: Yeah, I mean, my first  
10       comment on that is I, too, am not a lawyer and  
11       would seek legal counsel on questions of that  
12       nature.

13           MR. BARDOS: On the first question of the  
14       -- of compactness, I would not say that the  
15       Court elevated it to a Tier 1 priority. I  
16       think the Court recognized, as the language of  
17       the Constitution provides, that it is a Tier 2  
18       priority, but the Court did recognize that  
19       there is an interaction between Tier 1 and Tier  
20       2 priorities. So a district, for example, that  
21       is less compact might be -- might be telling of  
22       whether there was an intent to favor or  
23       disfavor a political party or an incumbent. So  
24       it serves as some indicator of whether there  
25       was compliance with the Tier 1 requirements.

1                   Similarly, there is an interaction between  
2 the Tier 2 compactness requirement and the  
3 minority protection provisions in the first  
4 tier, so that it if it is possible to comply  
5 with both, then it is our duty to comply with  
6 both. So simply serving a minority protection  
7 provision in Tier 1 does not exempt compliance  
8 from Tier 2 unless it is not possible to comply  
9 with Tier 2 at the same time.

10                  SENATOR GARDINER: But they -- and Mr.  
11 Chairman, if I could follow up?

12                  SENATOR GAETZ: Leader, please.

13                  SENATOR GARDINER: But they allow for  
14 political performance to be considered in  
15 determining the minority access, is that  
16 correct?

17                  MR. BARDOS: Right, and I think that is a  
18 separate issue. They do allow that; in fact,  
19 they require it. It requires a functional  
20 analysis, not simply an examination of the  
21 voting age population. So the Court indicated  
22 what measures it would find relevant to whether  
23 minority districts perform and have the ability  
24 to elect. So, for example, it looked at  
25 election results in the gubernatorial elections

1           of 2010 and 2006, the presidential election in  
2           2008, it looked at voter registration data, for  
3           example, the democratic percentage of  
4           registered voters or the percentage of  
5           registered Democrats who are African-American  
6           or the percentage of African-American  
7           registered voters who are Democrats, and then  
8           it also looked at turnout data, the percentage  
9           of general election voters or primary election  
10          voters who are Democrats or African-American,  
11          or the percentage of voters who actually turned  
12          out who are Democrats who are African-American.  
13          So these different combinations of turnout  
14          data, elections -- election results and voter  
15          registration data were all necessary components  
16          of the functional analysis in determining  
17          compliance with the Tier 1 standards.

18           SENATOR GAETZ: Leader Smith and then  
19          Senator Storms. Leader Smith.

20           SENATOR SMITH: Thank you. Going back to  
21          the compactness over here, going back to the  
22          definitions of compactness, you mentioned three  
23          tests. I wasn't on the last committee, as you  
24          know. Did you use any of those tests in the  
25          past in the Senate plan, and also, will you use

1       any or all of those tests in your response to  
2       the Court's decision?

3           SENATOR GAETZ: Mr. Guthrie.

4           MR. GUTHRIE: Thank you.

5           The Senate redistricting system in all of  
6       the plans, all of the plans submitted to the  
7       Senate, we enhanced the program mid-December.  
8           By December 15th, we had this in place where  
9       the -- all of the variables that you need for  
10      calculating all of those measures that I just  
11      discussed are available in the Senate  
12      redistricting system and on the Senate website  
13      for all of the plans submitted by the public or  
14      considered by the Legislature, as they have  
15      been since December 15th.

16           We did not include compactness measures  
17      among the measures that were initially  
18      submitted to the Supreme Court with the  
19      Petition, but I expect that we will be  
20      including such measures when we come back to  
21      this Committee, you know, for consideration of  
22      a proposed plan and when we submit the plan to  
23      the Supreme Court.

24           SENATOR GAETZ: Leader Smith for  
25      follow-up.

1 SENATOR SMITH: Of the three tests that  
2 you mentioned, which one in particular, or will  
3 it be a hybrid of the three that we will be  
4 using?

5 MR. GUTHRIE: We will report the three  
6 numbers, which are just ratios from zero to  
7 one.

8 SENATOR SMITH: So with each -- I'm sorry,  
9 Mr. Chair.

10 SENATOR GAETZ: Go ahead, Leader, please.

11 SENATOR SMITH: So with each district that  
12 you come up with, in your reporting will be  
13 this is their Reock score or this is the other  
14 score, we will do that for each one of them?

15 MR. GUTHRIE: Yes.

16 SENATOR SMITH: Okay, thank you.

17 SENATOR GAETZ: Did that -- do you wish to  
18 follow up, Leader?

19 Senator Storms, then Senator Gibson,  
20 please. Senator Storms.

21 SENATOR STORMS: Well, I am trying to  
22 understand the Court's analysis on compactness  
23 and as it relates to minority access seats, so  
24 as I would draft my -- if I were drafting a  
25 flow chart of the Court's opinion -- I guess

1           this is directed at the attorney and legal  
2           counsel for it. As I would draft my flow  
3           chart, my first threshold that I would get over  
4           would be is this a minority access seat -- if I  
5           am not talking about just a non-minority access  
6           seat, first I ask the question, is it a  
7           minority access seat? Is it a Voting Rights  
8           Act seat? If yes, then the next order of  
9           business is to analyze it for compactness. It  
10          seemed to me that the Court has analyzed it for  
11          compactness first according to the software  
12          that it used, that it purchased, and that  
13          seemed to be the mathematical analysis of  
14          compactness, and that is -- what we would call  
15          the functional analysis. But after they met  
16          that threshold, then the next thing that they  
17          did was they pulled the map back and said,  
18          okay, now, with that analysis, how does the  
19          district look. And if the district looks -- we  
20          call it geographical in this first bullet, but  
21          if it looks bizarre or it is not shaped in a  
22          compact form, then the Court said, can you  
23          achieve more compactness visually,  
24          geographically, by analyzing the performance of  
25          that district. And so I just wondered if -- if

1 I have that understanding -- is that the  
2 accurate understanding, and how are we pulling  
3 these pieces together? What are -- what's the  
4 order of thresholds that we should go through  
5 in analyzing it if that is not accurate?

6 SENATOR GAETZ: Mr. Guthrie.

7 MR. GUTHRIE: This is all complicated  
8 stuff, how these standards interrelate to one  
9 another. The answer that Mr. Bardos gave a few  
10 minutes ago was -- touched on the very point  
11 that you are raising, how do we reconcile these  
12 standards. Mr. Bardos, would you want to take  
13 another shot at --

14 MR. BARDOS: I think if we are looking at  
15 the diminishment standard in Tier 1, the first  
16 question is whether, as the Court stated, it is  
17 either a majority-minority district or a  
18 historically performing minority district, and  
19 if it is such a district, then it must remain  
20 such a district; otherwise, it would be  
21 diminishment. But the Court did also look at  
22 the interaction between the Tier 1 and Tier 2  
23 standards and assessed whether it is possible  
24 to preserve the district without diminishment  
25 and at the same time comply with the Tier 2

1 standard. So Tier 1 still comes first, but  
2 there is definitely an interaction between the  
3 two tiers.

4 SENATOR STORMS: What -- Mr. Chair?

5 SENATOR GAETZ: Senator Storms to follow  
6 up.

7 SENATOR STORMS: Well, so then -- so that  
8 my question really goes to what happens after  
9 we deal with how we achieve compactness? It  
10 seems to me that the Court said first you look  
11 at the functional analysis, you look at the  
12 mathematical equation, and then after doing  
13 that, you take a look and see if the tools that  
14 you used to achieve a compact district actually  
15 produced a visually compact district, or did it  
16 produce something that was not  
17 geographically/visually compact. And if your  
18 usage of the functional compactness produced  
19 something that is unshapely or doesn't appear  
20 by visually looking at it to be compact, then  
21 you have to use other tools. Is that how we  
22 should approach it, and is that an accurate  
23 analysis?

24 SENATOR GAETZ: Mr. Bardos.

25 MR. BARDOS: I would just make the

1 distinction that the functional analysis  
2 relates to whether the district has the ability  
3 to perform for minority voters, and then  
4 separately we have the compactness analysis,  
5 which relies primarily on a visual inspection  
6 and then secondarily on mathematical measures.  
7 And so both of those work in harmony with one  
8 another. I don't think there is a -- obviously  
9 the diminishment standard has constitutional  
10 priority, but then the visual inspection and  
11 the mathematical measures come in aid of that.  
12 But the functional analysis is directed at the  
13 separate question of minority voting rights,  
14 and they both must be satisfied if they can be  
15 both be satisfied. I don't know if that  
16 answers the question.

17 SENATOR GAETZ: Senator Storms, are you --

18 SENATOR STORMS: The only thing that I  
19 would add to that, Mr. Chair -- and I do think  
20 that this issue is important. The only thing  
21 that I would add to that is I don't think that  
22 the Court first started with a visual analysis  
23 of the compactness. It seemed to me in their  
24 opinion that they started -- that they looked  
25 at the functional analysis of it, of what we

1           tried to do from compactness, but then they  
2           came to looking at it and saying, "But you used  
3           all of this, but it did not produce a visually  
4           compact or geographically compact."

5           So it would seem to us we would still be  
6           permitted -- it would seem to me that we would  
7           still be able to be permitted to use functional  
8           tools first without just going to say, "Okay,  
9           well, first, we have to draw a square, so first  
10          draw a square, and then let's plug in all the  
11          functional tools." I don't think that the  
12          Court said that. I think what the Court said  
13          is, "You can use your functional tools, but  
14          just make sure at the end when you pull back  
15          the map, that it makes something that is --  
16          that is visually compact, and if it doesn't,  
17          then you have to go back and re-tool."

18          So I just am trying to stress that we  
19          don't have to start first with compactness,  
20          with geographical compactness, because if that  
21          is the case, all we need to do is draw grids on  
22          the map, and that can't be what the Court was  
23          saying.

24           SENATOR GAETZ: Mr. Guthrie.

25           MR. GUTHRIE: Yeah, my understanding,

1 Senator Storms, is that you and the Court are  
2 providing us the same direction there.

3 Compactness is a standard that is -- it is Tier  
4 2. It -- the Court allows -- let's go to the  
5 next slide. We are looking at political and  
6 geographical boundaries. In the third bullet  
7 here, the Court makes a conclusion that  
8 following a municipal boundary will not  
9 necessarily violate compactness. So making all  
10 of the standards work together is going to keep  
11 you from coming up with a plan that is nothing  
12 but circles.

13 SENATOR GAETZ: Let's go to Senator Gibson  
14 and then Senator Braynon. Senator Gibson.

15 SENATOR GIBSON: Thank you, Mr. Chair.

16 I have a two-part question, I think. When  
17 you talk about trying to make the -- I don't  
18 know, get the circumference of the circle or --  
19 from the district, are you speaking in terms of  
20 the way the district currently exists that you  
21 do your functional analysis to get the shapes?  
22 And the second part of that is, since minority  
23 voting opportunities is part of Tier 1, do you  
24 start there and then take your functional  
25 analysis to other areas around that particular

1                   district? Where is your starting point?

2                   MR. GUTHRIE: Yes, the --

3                   SENATOR GAETZ: Mr. Guthrie.

4                   MR. GUTHRIE: And Mr. Bardos is trying to  
5                   help us make a distinction between functional  
6                   analysis, which relates to looking at the  
7                   election results and turnout numbers by race  
8                   and things beyond voting age population for  
9                   determining opportunities of minority voters in  
10                  an area to elect a candidate of their own  
11                  choosing, that is what the Court refers to as  
12                  functional analysis, and these quantitative  
13                  geometric compactness measures which are used  
14                  to -- as a guide for determining whether or not  
15                  shapes are compact. Those can be applied both  
16                  to the benchmark districts, the districts that  
17                  are currently in place, and to the proposed new  
18                  districts. So for any of these measures, we  
19                  can run them both against the benchmark plan,  
20                  alternative plans and the plan that the  
21                  Legislature ultimately adopts.

22                  SENATOR GAETZ: Senator, did you want to  
23                  follow up, or is that satisfactory for the  
24                  moment?

25                  SENATOR GIBSON: May I ask a follow-up?

1 SENATOR GAETZ: Of course you may.

2 SENATOR GIBSON: Thank you. Thank you,  
3 Mr. Chair, and I know it is very complicated, I  
4 was not really good in math in school, but if  
5 you already have districts, as we all do, then  
6 why wouldn't you start with what exists to  
7 apply the -- all of the formulas that have to  
8 be applied to then come up with what the new  
9 district lines should look like sort of?

10 SENATOR GAETZ: Well, Mr. Guthrie, I would  
11 like you to respond to that, but my very  
12 layman's reading, and math was not my long suit  
13 either, but my layman's reading of the Court is  
14 that the Court agreed with those who offered  
15 the criticism that the proposed Senate plans  
16 looked too much like the districts that we  
17 started with, that were the 2002 template.  
18 Whether you would agree or disagree with that,  
19 my layman's read is that the Court implied, if  
20 not expressed, agreement with critics who said  
21 this looks like a lot like what you started  
22 with. But, Mr. Guthrie, can I -- yes, of  
23 course, ma'am.

24 SENATOR GIBSON: Just -- but wouldn't that  
25 be because we didn't apply the other -- the

1           functional analysis in the way that it is laid  
2           out? I mean, we started where we started with  
3           the districts that we have, but the Court, I  
4           think, is saying that what we ended up with was  
5           not inclusive enough of the formulas so that  
6           the districts look different.

7           SENATOR GAETZ: Mr. Guthrie.

8           MR. GUTHRIE: I hear what you are saying  
9           there, Senator, that one issue that the Supreme  
10          Court had was that the Senate failed to look at  
11          political data as a justification or  
12          determinate of where -- of minority  
13          opportunities, and -- but then they gave us  
14          some direction, particularly in northeast  
15          Florida where they said that the opponents had  
16          shown a more compact district in Duval County  
17          that the Supreme Court believed did not  
18          diminish opportunities of minority voters, and  
19          so they put the two of those together to reach  
20          a conclusion.

21           Now, I think you are exactly right that  
22          the Senate could perform a functional analysis  
23          of voting and of minority opportunities in  
24          northeast Florida, and if that functional  
25          analysis showed that it was necessary to go to

1                   St. Augustine or Palatka or Daytona Beach in  
2                   order to create a district that, in fact, would  
3                   preserve opportunities for minority voters to  
4                   elect candidates of their own choosing, that  
5                   would provide the necessary justification for  
6                   such a district. But as Mr. Bardos said  
7                   earlier, if you can have a performing district  
8                   that is also compact, the Supreme Court is  
9                   saying one that serves both goals is superior  
10                  to one that merely serves one.

11                  SENATOR GAETZ: Senator Braynon -- I'm  
12                  sorry, Senator Gibson, did that satisfy you for  
13                  the moment? Senator Braynon.

14                  SENATOR BRAYNON: You hit on a few things  
15                  I was about to ask about, so let me ask a very  
16                  basic question first before I ask my questions,  
17                  which is, are we going to start with what we  
18                  have -- what we sent to the Supreme Court, or  
19                  are we starting over? And that may be to the  
20                  Chair.

21                  SENATOR GAETZ: Well, thank you very much  
22                  for that question, and, of course, it is the  
23                  will of the Committee and the Senate, but I  
24                  would defer to counsel, but I am told that a  
25                  principle that we should keep in mind is that

1           the remedy should not exceed the problem. We  
2        shouldn't go remedying things that were not  
3        pointed out as problems.

4           Now, having said that, I don't think that  
5        you can only affect eight districts -- and this  
6        may be a good segue after Senator Sobel is  
7        finished and after you are finished, Senator  
8        Braynon, with your questions, may be a good  
9        segue to get into the districts themselves, but  
10       unless the Court is going to let us go out into  
11       the Atlantic Ocean, the Gulf of Mexico, Georgia  
12       and Alabama, we are going to have to stay  
13       inside Florida. So if you make changes to the  
14       eight districts that were found to be invalid,  
15       my guess is it would be impossible to do so  
16       without making some adjustments to contiguous  
17       districts. But if the question is, are we  
18       going to start with a clean sheet of paper,  
19       unless it is the will of this Committee that we  
20       throw out a map which was largely agreed to by  
21       the Courts, I would say that it would be our  
22       direction, again, subject to the will of this  
23       Committee and the will of the Senate, to  
24       correct those problems which were pointed out  
25       and then to deal with any ancillary issues

1           associated with that, because when you move a  
2         line in one district that is next to another  
3         district, you very well may have to make  
4         adjustments. So that is my opinion, but that  
5         is subject to the will of this Committee and  
6         the will of the Senate.

7           And, Senator Braynon, would you yield to  
8         President Margolis, and then we will come back  
9         to you?

10          SENATOR BRAYNON: Okay.

11          SENATOR GAETZ: Madam President.

12          SENATOR MARGOLIS: How are you intending  
13         to deal with the numbering issue, because that  
14         seems to be a very big issue that affects  
15         everybody?

16          SENATOR GAETZ: Well, Madam President, if  
17         you would allow us to, if we could get the  
18         other questions out of the way and then get  
19         into the specifics of the Court's opinion, I  
20         think we will get there. But, Senator Braynon,  
21         you have the floor.

22          SENATOR BRAYNON: Thank you.

23          Okay. So the reason I ask is because I  
24         read quite a bit of this, if not all of it, and  
25         we have -- we have been going over the

1 definitions and things like -- things of that  
2 nature, and a lot of the stuff that you've  
3 mentioned here, the opinion says we just  
4 applied wrong straight across. It says  
5 inconsistent definitions of political and  
6 geogra- -- that the Senate did this because  
7 they operated under an inconsistent definition  
8 of political and geographic boundaries, which  
9 you are clarifying now, or they clarified for  
10 us. It mentioned that we did some things  
11 because we did not perform a functional  
12 analysis. I know many times we said during our  
13 meetings that, well, we drew this district  
14 because this one was a minority district, but  
15 if we didn't do a functional analysis -- which  
16 not to say I told you so, but I mentioned a few  
17 times --

18 SENATOR GAETZ: That's okay, you can.

19 SENATOR BRAYNON: -- that we needed that  
20 information in order to say that this performed  
21 at an XYZ level to be a minority district. So  
22 if we never did the correct functional analysis  
23 to come to that conclusion on many things,  
24 whether it be geographical boundaries,  
25 minorities, then aren't we -- don't we owe it

1 to what the opinion said, that we may need to  
2 go back over -- even if we start with what we  
3 had, there are quite a few definitions of very  
4 basic principles that we might -- may have done  
5 somewhat wrong or may have misunderstood as  
6 the -- or didn't have the -- as it said, we  
7 operated under not having the definitions  
8 properly.

9 SENATOR GAETZ: Well, Senator Braynon, I  
10 would just say this, that I think you make an  
11 excellent point, and as we consider a committee  
12 amendment to the resolution that was introduced  
13 on the floor today, we are going to have to  
14 defend the entire Senate map just like we did  
15 before.

16 SENATOR BRAYNON: Uh-huh.

17 SENATOR GAETZ: And so I think we are  
18 well-served to pay attention to the Court's  
19 opinion as to functional analysis. That may be  
20 something different than what some critics are  
21 saying, and that is we should just start with a  
22 clean sheet of paper and draw a map of Florida  
23 and start over. But I think the points that  
24 you make are very valid points.

25 Yes, sir, you are recognized.

1                   SENATOR BRAYNON: So I guess in saying  
2                   that, it mentions -- I know that certain  
3                   districts were challenged in the court case,  
4                   and then -- and those are the ones that they  
5                   opined on, but then even if you go to 161, it  
6                   says, "While no party challenged District 14,  
7                   the Senate likewise should perform the  
8                   necessary analysis on that district as well,"  
9                   almost as implying that, you know, just because  
10                  they didn't challenge it, it doesn't mean that  
11                  there are other districts that we may need to  
12                  look at. Are we planning to also look at other  
13                  districts, I mean, as a result of -- whether it  
14                  be the movement that we have because of the  
15                  districts that we plan to move, or things that  
16                  maybe show out -- maybe show the same  
17                  inconsistencies, but they just weren't  
18                  challenged?

19                  SENATOR GAETZ: Well, I think, Senator  
20                  Braynon, subject to the will of the Committee,  
21                  it would be our intention to go through the  
22                  Supreme Court's opinion with tweezers and to  
23                  look for all of the areas where the Court has  
24                  made a declaration of one sort or another, and  
25                  to follow that declaration as faithful as we

1 can. So if the Court says you should have  
2 performed a functional analysis on a particular  
3 district, then in our defense of how that  
4 district is configured in a revised Senate  
5 joint resolution, we have to be able to say,  
6 "Here is our defense, here is the functional  
7 analysis we did." Again, I would point out  
8 that is different from, you know, declaring  
9 that the whole -- that the whole map is  
10 completely invalid, as some critics would do,  
11 but wherever the Court has indicated that we  
12 need to make a change, I think it is incumbent  
13 on us not to argue with the Court, but to do  
14 what the Court said.

15 And next, Senator Sobel, and then we will  
16 go to you, Leader Rich. Senator Sobel.

17 SENATOR SOBEL: Thank you, Mr. Chair.

18 In the Court's wisdom, they said,  
19 "Following a municipal boundary will not  
20 necessarily violate compactness." Would that  
21 also apply to counties?

22 SENATOR GAETZ: Mr. Guthrie.

23 MR. GUTHRIE: Yes, I believe it would.

24 SENATOR SOBEL: Follow-up, Mr. Chairman?

25 SENATOR GAETZ: Yes, Senator Sobel, of

1 course.

2 SENATOR SOBEL: And then rivers, railways,  
3 Interstates and state roads are geographical  
4 boundaries. I believe in the Court's wisdom  
5 they would include them as well. And my  
6 question here is, how do they rank compared to  
7 other standards?

8 SENATOR GAETZ: Mr. Guthrie.

9 MR. GUTHRIE: The political and  
10 geographical boundaries are in Tier 2. The  
11 Court did make note of the fact that complying  
12 with that standard includes a phrase, "where  
13 feasible," so they -- the Court made a bit of a  
14 distinction based on that, but I think the  
15 Court is expecting, as the people of Florida  
16 who passed this -- these amendments are  
17 expecting, that the Legislature will balance  
18 all of the standards in the precedence set by  
19 the language of the Constitution, with the  
20 guidance provided by the Supreme Court, in  
21 order to come up with effective districts for  
22 representation.

23 SENATOR GAETZ: And I would just say,  
24 Senator Sobel, that, again, I read this as a  
25 layman, but I think in some cases the Courts

1           were impressed by rivers, and in other cases  
2           they were not impressed by rivers. I think it  
3           depends on the river. And we just need to be  
4           mindful of that as we go back through our  
5           analysis.

6           Leader Rich.

7           SENATOR RICH: Thank you, Mr. Chair.

8           This isn't the comment that I was going to  
9           make, but I just want to follow up to what you  
10          just said, and I think what the Court said is  
11          that we need to be consistent with what we do,  
12          and they saw the House as being consistent in  
13          using those boundaries and maybe that we  
14          weren't.

15          But I do want to just mention this issue  
16          about whether or not we are looking at the  
17          whole map, because as you mentioned, if you  
18          have eight districts, then, obviously --  
19          personally, I think, you know, you have to look  
20          at the entire map, because eight districts in  
21          one way or another, once you start to move the  
22          boundaries, the lines affect every other  
23          district. But the Court, to my understanding,  
24          said that the other areas were valid as -- I  
25          guess as it relates to facial review, but I

1           don't think that that means that they are  
2           saying that there might not be something else  
3           wrong with some of the other districts, and I  
4           am just going to throw one out as an example,  
5           because I had used it in my closing remarks  
6           when we, you know, sent the map first out of  
7           here.

8           And if you look at the new District 32,  
9           which was District 34, it was not included in  
10          the list of eight districts that were declared  
11          invalid, but when I look at it, its boundaries  
12          were geographically doubled or more than its  
13          previous boundaries, and it now stretches from  
14          Miramar in the southern end of Broward County  
15          to far north past Pahokee and into Lake  
16          Okeechobee with diverse population centers that  
17          are, you know, drastically geographically  
18          separated over far-reaching ends of two  
19          counties and extending on the west side from --  
20          into a large portion of the Everglades, all the  
21          way over into the center of Boca Raton. So, to  
22          me, when I look at that, I think that there are  
23          real issues with that. And just because it  
24          wasn't mentioned, I would like to throw out  
25          that I think we should be looking at the entire

1 map, and just because facially the Court didn't  
2 say that this district or another district had  
3 some issues doesn't mean that there aren't some  
4 issues there that, you know, we could not  
5 possibly address. So I just wanted to put that  
6 out there.

7 SENATOR GAETZ: Thank you very much,  
8 Leader.

9 Senator Latvala, and then unless we have  
10 some really compelling questions, we might want  
11 to get into specific comments that the Court  
12 made about particular districts and leave time  
13 for public comment. Senator Latvala, you are  
14 recognized.

15 SENATOR LATVALA: Thank you, Mr. Chairman.

16 Of course, I am not a lawyer and I am not  
17 a legal expert, but common sense would tell me  
18 that where specific districts were mentioned by  
19 the Court and upheld by the Court, my common  
20 sense would tell me that we're -- it is a very  
21 risky proposition to go changing those  
22 boundaries. And I for one member -- as one  
23 member of the Committee, believe that we should  
24 concentrate on the issues that were  
25 specifically pointed out to us by the Court and

1           not -- and minimize the changes we make to  
2           neighboring districts just based on what we  
3           have to do, and when there are districts that  
4           are specifically validated by the  
5           interpretation of the Court, that we shouldn't  
6           touch them at all. That is my opinion.

7           SENATOR GAETZ: Thank you, Senator  
8           Latvala, and let me turn to Mr. Bardos, who can  
9           cite us the specific Court -- the section of  
10          the Court's opinion that might be instructive  
11          here. And I would just say that that is why we  
12          have amendments. If there are individual  
13          Senators who believe that whatever comes out of  
14          this Committee is insufficient and there needs  
15          to be a wider swath cut, that is why we have an  
16          amendatory process and that is why the  
17          Chairman's amendment will be published well in  
18          advance of the amendment deadline, so that if  
19          you feel you need to cut a wider swath, that  
20          you have every opportunity to do so.

21           Mr. Bardos.

22           MR. BARDOS: Thank you.

23           So in the conclusion of the Court's  
24          opinion, it notes that it was asked to give  
25          very specific instructions on how the

1 Legislature can remedy the plan, and the Court  
2 stated that its duty is not to dictate the  
3 apportionment plan, but to provide the Senate  
4 with sufficient guidance in our interpretation  
5 of the standards, and then it identified four  
6 things that the Legislature should do.

7 One was that it should "remedy the  
8 constitutional problems with respect to these  
9 districts," and there it was referring to  
10 Senate Districts 1, 3, 6, 9, 10, 29, 30 and 34.  
11 So "remedy the constitutional problems with  
12 respect to these districts, redrawing these  
13 districts and any affected districts in  
14 accordance with the standards as defined by  
15 this Court." So that would be the eight  
16 districts and any districts that are impacted  
17 when the eight are redrawn.

18 It also said that the Legislature should  
19 conduct the functional analysis, which Mr.  
20 Guthrie has said that we will do, and that the  
21 Legislature should determine whether it was  
22 feasible to utilize municipal boundaries -- the  
23 municipal boundaries of Lakeland, and finally  
24 to adopt an incumbent-neutral numbering scheme.

25 So the Court was quite specific about the

1           four things that -- in its guidance that the  
2           Legislature should do, and so it provided --  
3           did provide some road map there for what our  
4           task is.

5           SENATOR GAETZ: Thank you very much. If  
6           there's no other comment or question at this  
7           point, Mr. Guthrie, what I would like to do,  
8           with the Committee's indulgence, is to provide  
9           a few minutes at the end for public comment.  
10          We always want to do that at all of our  
11         committee meetings. So if you can get to the  
12         specifics that Mr. Bardos just mentioned and  
13         walk us through that, I'd be grateful.

14          MR. GUTHRIE: And for later review, the  
15         conclusions that Mr. Bardos just spoke of are  
16         on page six and seven in your meeting packet,  
17         so you can reread those there, but let's turn  
18         now to the specific issues that the Supreme  
19         Court asked the Legislature to address.

20          The first is that the Court found that  
21         the -- or that the Legislature is prohibited  
22         from numbering districts with the intent to  
23         favor or disfavor an incumbent, and they  
24         further concluded that a system that  
25         significantly advantages incumbents by

1 increasing the length of time that they may  
2 serve by two years most assuredly favors  
3 incumbents. The Court went on to say the  
4 purpose --

5 SENATOR GAETZ: Excuse me, Mr. Guthrie.  
6 Senator Detert.

7 SENATOR DETERT: Thanks.

8 If you would back up to the other slide.  
9 Aren't those two things right there on that  
10 page contradictions? You are not supposed to  
11 favor or disfavor an incumbent, but then the  
12 second paragraph says that incumbents shouldn't  
13 have, you know, a ten-year seat, they should  
14 only have an eight-year seat basically.

15 SENATOR GAETZ: Mr. Guthrie.

16 MR. GUTHRIE: I believe the key words in  
17 the second bullet here -- it is a -- it is the  
18 fact that the Senate provided a system, a rule,  
19 that consistently -- what the rule did is those  
20 who had two-year terms before redistricting got  
21 four-year terms after redistricting. Those who  
22 had four-year terms before redistricting got  
23 two-year terms after redistricting. Two plus  
24 four or four plus two both add up to six, so a  
25 consequence of that --

1 SENATOR DETERT: The criticism is that --

2 SENATOR GAETZ: Senator Detert.

3 SENATOR DETERT: Thank you, Chair.

4 So the criticism then is that there was a  
5 system?

6 SENATOR GAETZ: Yes, Senator Detert.

7 SENATOR DETERT: Got it.

8 SENATOR GAETZ: Senator Lynn.

9 SENATOR LYNN: Thank you, Mr. Chairman.

10 And that criticism, that happened late in  
11 the process, which seemed, you know, all of a  
12 sudden, the numbers changed, and I know I had a  
13 question about that myself. So if we have to  
14 address that, we are addressing the entire map,  
15 is that correct?

16 SENATOR GAETZ: Senator Lynn, as to the  
17 numbering system?

18 SENATOR LYNN: Yes.

19 SENATOR GAETZ: Absolutely.

20 SENATOR LYNN: Uh-huh.

21 SENATOR GAETZ: Mr. Guthrie, go ahead.

22 MR. GUTHRIE: And so with numbering, I and  
23 my staff have been giving some thought as to  
24 what options the Senate might want to consider  
25 as a way of resolving this, and this is really

1 something for the Committee to consider as we  
2 meet here today and again next week. One  
3 possibility would be to apply a different rule  
4 that -- one that limits incumbents to the  
5 minimum term in office, so one that said that  
6 we are going to try to enforce the eight is  
7 enough campaign slogan through redistricting.  
8 So people that had a two-year term prior to  
9 redistricting would get a two-year term after  
10 redistricting so that they then would get one  
11 four-year term and then be done serving in the  
12 Senate. Persons who had four-year terms prior  
13 to redistricting would get a four-year term  
14 after redistricting and again would be termed  
15 out of the Senate. So that -- you could apply  
16 a rule like that.

17 The criticism of such a rule is, as was  
18 mentioned, that seems to disfavor incumbents,  
19 and it particularly is going to disfavor those  
20 incumbents who have a two-year term, a two-year  
21 term and a four-year term, they are running for  
22 election three times in order to get two terms  
23 in the Senate when the normal Senate term as  
24 provided by the State Constitution is four  
25 years.

1           A VOICE: Mr. Chairman?

2           SENATOR GAETZ: Okay, we will take a few  
3        questions. Senator Sachs.

4           SENATOR SACHS: Thank you very much, Mr.  
5        Chairman. My question is this --

6           SENATOR GAETZ: I think your mike may not  
7        be on, ma'am. It is possible it is --

8           SENATOR SACHS: It has a Band-Aid.

9           SENATOR GAETZ: It has a Band-Aid? So it  
10       is a sick little mike.

11          SENATOR SACHS: I will move over here.

12        Thank you very much, Mr. Chairman.

13          My question is this: How is -- what was  
14       the pattern, what was the rule for the last  
15       number of terms in which we have done  
16       redistricting? In other words, it seems like  
17       we have a number of choices here, none of which  
18       seems to be necessarily good for us to choose  
19       at this time. What has been the norm in the  
20       State of Florida for a numbering of these  
21       geographic districts for the Senate?

22          SENATOR GAETZ: Mr. Guthrie.

23          MR. GUTHRIE: Well, all those prior  
24       re-numberings, as the Court notes in its  
25       opinion, were before Amendment 21 became part

1           of the State Constitution. The method that was  
2         used is the Senate chose which numbers went  
3         with which districts, and what the Senate set,  
4         that's what was.

5           SENATOR SACHS: If I may follow up?

6           SENATOR GAETZ: Yes, of course, Senator  
7         Sachs.

8           SENATOR SACHS: Thank you very much, Mr.  
9         Chairman.

10          Was the same pattern used by the Senate  
11         for the last number of years before we had  
12         these two amendments, sir?

13          SENATOR GAETZ: Mr. Guthrie.

14          MR. GUTHRIE: In every redistricting of  
15         which I am aware since the Constitution took  
16         effect in 1968, the Senate chose to assign  
17         numbers to districts, and that has been  
18         something -- you know, it was an issue that was  
19         considered on the Senate floor, but it was not  
20         anything that the Supreme Court looked at.

21          SENATOR GAETZ: Senator Montford, and then  
22         Senator Garcia.

23          SENATOR MONTFORD: Thank you, Mr. Chair.

24          A question, and maybe it is -- I suggest  
25         we may look at it a little differently. We are

1 focusing on the incumbent, but I suggest we may  
2 want to focus on the voters, and that -- is the  
3 question is whether or not it would be fair for  
4 a particular set of voters, citizens, if you  
5 will, that would have to go through three  
6 elections in six years. It is not just the  
7 incumbent that I think we should focus on, but  
8 it is the question of the community and the  
9 citizens themselves, how many elections should  
10 they have to endure. Has that thought ever  
11 occurred to anybody, Mr. --

12 SENATOR GAETZ: I can tell you, Senator  
13 Montford, that a number of individuals who have  
14 talked with me over the course of time from --  
15 people from the public have said the same  
16 thing, but Mr. Guthrie?

17 MR. GUTHRIE: Yes, that is something that  
18 we have considered along the way. We are  
19 taking our guidance, though, from the Supreme  
20 Court opinion, and the opinion says that a  
21 system that increases the time that they may  
22 serve most assuredly favors incumbents. So  
23 because of the way the two plus four, four plus  
24 two, works, a system that gives that due  
25 consideration to the hardship cause to voters

1           is going to have an effect of having many  
2           Senators get a lengthened period of service in  
3           the Senate.

4           SENATOR GAETZ: Senator Garcia and then  
5           Leader Rich and then Latvala and then Lynn.  
6           Away we go.

7           SENATOR GARCIA: Thank you, Mr. Chairman.

8           And I understand the Supreme Court has  
9           this opinion, but in the fact that we are not  
10          supposed to favor or disfavor any incumbent, in  
11          the amendments that were passed, does it  
12          mention anything about the numbering of the  
13          districts? From my -- can you help me  
14          understand that part, as I -- I don't think it  
15          does, but --

16          MR. GUTHRIE: A question that was briefed  
17          to the Supreme Court and discussed at oral  
18          argument was whether the scope of Amendment 5  
19          went to renumbering of districts, and the  
20          Court's opinion was that it does.

21          SENATOR GAETZ: Leader Rich.

22          SENATOR RICH: Thank you, Mr. Chair.

23          I just kind of wanted to make a comment  
24          about -- I mean, the voters also voted that  
25          they wanted us only to serve eight years. So I

1 think -- and I don't know, correct me if I am  
2 wrong, but I think that basically what the  
3 Court said is that they wanted as few people to  
4 serve more than eight years as possible, and  
5 that whatever -- however we number, that that  
6 is the direction we should be going, not in a  
7 system that creates as many as possible  
8 incumbents to serve ten years.

9 SENATOR GAETZ: Let's look at the law and  
10 see what it says. Mr. Bardos, could you give  
11 us a little bit of legal framework here in  
12 understanding Leader Rich's point?

13 MR. BARDOS: Right. Well, the Court was  
14 not -- it did not give us a specific direction  
15 as to how we can remedy the defect in the  
16 numbering system. Obviously, as stated, that  
17 if there is a systematic effort to favor  
18 incumbents, that would violate the  
19 Constitution, but it did also recognize that  
20 the eight-year term limit provision is not an  
21 eight-year cap, it is not that members cannot  
22 serve beyond eight years, it simply provides  
23 that a candidate running for reelection who by  
24 that time has served eight years may not run  
25 again. So the Court recognized that the -- it

1       is not a violation of the Constitution for  
2       somebody who has been in office for, say, seven  
3       years, to run again for a four-year term. That  
4       would be consistent with the Constitution.

5           So I -- while the Court didn't say it, I  
6       think that what it was wary of was a systematic  
7       effort to favor incumbents, but it did not read  
8       the term limits provision as a hard-and-fast  
9       eight-year limitation.

10          SENATOR GAETZ: Senator Latvala.

11          SENATOR LATVALA: Thank you, Mr. Chairman,  
12       a couple of questions.

13           First of all, let's get back to Senator  
14       Sachs's original question, because I really  
15       don't think you answered that question in its  
16       -- in its totality. When she asked you how the  
17       Legislature numbered districts prior to term  
18       limits, you said, well, it was numbered by the  
19       Senate, but you didn't say how they were  
20       numbered by the Senate. As I recall, and  
21       correct me if I am wrong, in the '60s and '70s  
22       and '80s and for the most part in the '90s, we  
23       started with District No. 1 in the Panhandle,  
24       in Pensacola, the First District, and we came  
25       all the way down through the state sequentially

1 and ended up with No. 40 somewhere in the  
2 vicinity of Miami and Key West, is that not  
3 correct?

4 SENATOR GAETZ: Mr. Guthrie.

5 MR. GUTHRIE: It is generally true that  
6 the numbering went from the northeast to the  
7 south, but -- or, excuse me, from the northwest  
8 to the south, but there was not a hard-and-fast  
9 rule to determine that districts are always  
10 numbered next to each other. Senator Gibson in  
11 Jacksonville today represents Senate District  
12 1, for instance.

13 SENATOR LATVALA: What I said, Mr. -- I'm  
14 sorry.

15 SENATOR GAETZ: No, go ahead, please,  
16 Senator Latvala.

17 SENATOR LATVALA: What I said, Mr.  
18 Guthrie, was prior to term limits and prior to  
19 the last redistricting --

20 MR. GUTHRIE: Oh, okay.

21 SENATOR LATVALA: -- in 2002. In other  
22 words, when I was in the Senate before, all the  
23 Dade -- Miami-Dade Senators sat on the back row  
24 because they all were numbers in the 30s, okay.  
25 The odd-numbered people sat on one side of the

1 room and the even-numbered people sat on the  
2 other side of the room. Is that not correct?

3 SENATOR GAETZ: Mr. Guthrie.

4 MR. GUTHRIE: I remember the tradition of  
5 having the Senate split by, you know, by odds  
6 and evens, yes, but the provision that --  
7 well -- and I misspoke earlier that the  
8 question of numbering was some -- a question  
9 that very much was before the Florida Supreme  
10 Court in its 1982 in re apportionment case  
11 where the Senate took the position that  
12 Senators who were elected two years prior had  
13 been elected to four-year terms and should be  
14 allowed to serve out those terms, as happens in  
15 some other states, but the Supreme Court  
16 determined in 1982 that terms must be  
17 truncated. So the issue with numbers in 1972  
18 and 1982 and 1992 was mostly who was going to  
19 get a two-year term and who was going to get a  
20 four-year term after redistricting.

21 SENATOR GAETZ: Senator Latvala.

22 SENATOR LATVALA: But for the most part,  
23 the numbers started with No. 1 in the Panhandle  
24 and ended up with No. 40 somewhere in south  
25 Florida, is that not correct?

1                   MR. GUTHRIE: I believe that is right,  
2                   yes.

3                   SENATOR LATVALA: Okay.

4                   SENATOR GAETZ: Senator Latvala.

5                   SENATOR LATVALA: The decision that was  
6                   made on the numbering this year was not made  
7                   based on any kind of sequential numbering, it  
8                   was based -- and maybe you could explain how we  
9                   decided to do that, you know, it was made  
10                  purposely to advantage everyone who got elected  
11                  and only had a two-year term, to let them  
12                  finish out their term and then run again, is  
13                  that not correct? I mean, in other words, we  
14                  had even a piece in the analysis that explained  
15                  it. I think Senator Negron might have been the  
16                  one that thought the scenario up, but it was --  
17                  it was explicitly to advantage every member of  
18                  the Senate, Democrat or Republican, and give  
19                  them a maximum amount of time. And maybe you  
20                  could explain that to us now, what that -- what  
21                  that theory was.

22                  SENATOR GAETZ: Mr. Guthrie.

23                  MR. GUTHRIE: I would not state it quite  
24                  that way, Senator. I believe what the -- the  
25                  tone of the staff analysis was to avoid causing

1           undue hardship or extra hardship to some  
2           Senators, and to try to treat Senators the same  
3           with respect to renumbering. So persons who  
4           had a shortened term prior to redistricting  
5           were first in line to get a longer term after  
6           redistricting. Persons who had a full term  
7           prior to redistricting were last in line to get  
8           a four-year term after redistricting.

9           SENATOR GAETZ: We will take a question,  
10          yes, Senator Latvala, for a final follow-up.

11          SENATOR LATVALA: The -- and I guess that  
12          is one way of explaining it. The -- but the  
13          point I am trying to make is that the -- that  
14          the decision and the reading of the Court was  
15          based on everyone getting that advantage, and  
16          not just an incidental, accidental situation of  
17          a sequential numbering throughout the state and  
18          certain people got the advantage because their  
19          district happened to be at a place where a  
20          certain number was -- you know, was arrived at;  
21          in other words, that's the distinguishing thing  
22          I am trying to get at here is it was because  
23          everyone was treated that way, not because some  
24          people accidentally in the way that the  
25          numbering was done were treated that way. Is

1           that not correct?

2           SENATOR GAETZ: Mr. Guthrie.

3           MR. GUTHRIE: Mr. Bardos, would you point  
4           to --

5           SENATOR GAETZ: Mr. Bardos.

6           MR. BARDOS: Sure. I think that is pretty  
7           accurate. The Court somewhere referred to the  
8           purposeful manipulation, in its words, of the  
9           district numbers --

10          SENATOR GAETZ: Here it is.

11          MR. BARDOS: -- and I think that it was  
12          the fact -- there it is, "purposefully  
13          manipulating the numbering of the districts in  
14          order to allow incumbents to serve in excess of  
15          eight years." So I think that was at the heart  
16          of it, and the fact that it was systematic,  
17          that there was a rule by which that was  
18          accomplished. I don't think it was the fact  
19          that there happened to be one or more  
20          incumbents who received the opportunity to  
21          serve for more than eight years.

22          SENATOR GAETZ: Senator Lynn.

23          SENATOR LYNN: I guess my question is very  
24          similar to Senator Latvala's, because I was --  
25          when we left with having seen maps and so forth

1 and we saw -- not when we left. We had seen  
2 the maps and we saw numbers on those maps, and  
3 in my mind, those were the numbers. And the  
4 next time we looked at something, suddenly all  
5 of the numbers were different, and there was an  
6 explanation given, such as has been explained,  
7 which appears to be very kind and understanding  
8 to members, but I guess I have a concern, for  
9 instance, what was my District 7 -- and, to me,  
10 it doesn't matter, I won't even be here, but it  
11 is so totally different. So anybody who  
12 planned to run and did plan to run for District  
13 7, in fact, has a whole different world now and  
14 a totally different numbered district, which  
15 can effect, you know, the two years, the four  
16 years and so forth. And I am just wondering  
17 why we didn't -- why we weren't more arbitrary  
18 in just tossing it to the gods, because I think  
19 that is what exactly the Courts are saying  
20 right now.

21 SENATOR GAETZ: Well, if we could  
22 possibly, just because we do have a time limit  
23 today, maybe in answer to Senator Lynn's  
24 question, why don't we move to the potential  
25 options on a going-forward basis and then move

1           into the individual districts that were  
2           specifically cited by the Court and leave time  
3           for the public comment.

4           MR. GUTHRIE: So another rule that the  
5           Senate maybe could apply for determining which  
6           districts are odd or which are even is some  
7           sort of a geographic rule where starting from  
8           the west -- so, again, a mechanical system, but  
9           we would just say which district has the  
10          highest longitude number, and give that  
11          district number one, and then which has the  
12          second highest and on through the 40 districts.  
13          The difficulty with that -- such a rule is A,  
14          explaining it, and B, it may have a consequence  
15          that somebody infers intent from.

16           The Senate could -- the third bullet here,  
17          Senator Latvala, is numbering the districts in  
18          an orderly pattern, which is exactly the model  
19          you talked about, but that will involve making  
20          choices along the way of which -- you know,  
21          whether the next district is odd or the next is  
22          even, which I think will cause questions.

23           And so the fourth possibility for coming  
24          up with a standard that -- and here is what the  
25          Supreme Court in its opinion concluded the

1           Legislature should do. The Legislature should  
2           renumber the districts in an incumbent-neutral  
3           manner, and a way that I believe would be  
4           assuredly incumbent-neutral would be to simply,  
5           as Senator Lynn said, randomly assign odd or  
6           even numbers by chance to the districts.

7           So those are the four options that I and  
8           my staff were able to come up with for  
9           numbering districts.

10          SENATOR GAETZ: Okay. Senator Storms, but  
11          let's try to be respectful of the fact that we  
12          may have public comment.

13          SENATOR STORMS: Okay. So be short then.

14          SENATOR GAETZ: Yes, ma'am, if you could.

15          SENATOR STORMS: So I guess my issue with  
16          the randomly assigning odd and even numbers is  
17          if we did that and say, for instance, all of  
18          the minority seats were the ones that came out  
19          -- just by random you did that and they are the  
20          ones who came up short, there isn't anything we  
21          are going to be able to do to convince anybody  
22          that that wasn't -- that the fix wasn't in. Or  
23          just say, for instance, that all of them came  
24          out so that one geographic location all had the  
25          same number. I don't know how you are going to

1 convince anybody that it didn't work -- that  
2 that wasn't intentional. And it seems to me  
3 that you really open yourself up to an outcome  
4 that can really jeopardize, you know, what we  
5 are trying to do. So I just want to put that  
6 out there.

7 SENATOR GAETZ: Okay.

8 SENATOR STORMS: That would be a serious  
9 problem. I don't know how we would overcome  
10 that if everybody -- all the minority seats got  
11 the least number of years. What would you do  
12 with that?

13 SENATOR GAETZ: Well, Senator Storms,  
14 particularly since the Court -- and, again,  
15 this is my layman's view -- the Court says that  
16 effect proves intent, it certainly is a  
17 consideration we need to keep in mind.

18 President Margolis.

19 SENATOR MARGOLIS: Mr. Chairman, it seems  
20 to me that people voted for eight is enough,  
21 and that is probably what we should be looking  
22 at. And so everybody is going to run this  
23 year, and if they have -- you know, if they  
24 have served four years, then they have a  
25 four-year seat. If they served six years, they

1 have a two-year seat. I mean, you started with  
2 two years -- some of them -- some started with  
3 two-year terms, some started with four-year  
4 terms. Why don't we just say eight is enough  
5 and figure out at the end of the eight years  
6 whether people are going -- can run again or  
7 not run again?

8 SENATOR GAETZ: Excellent point.

9 SENATOR MARGOLIS: Why don't we have an  
10 implementing legislation to do just that?

11 SENATOR GAETZ: Excellent point,  
12 absolutely.

13 Senator, go ahead, please.

14 SENATOR WISE: The -- Mr. Chair, what do  
15 you do with a person who gets a one-year term  
16 because of a resignation or whatever from a  
17 Senator, and then we are into reapportionment  
18 and then you get a two-year term, do you get  
19 then two more four-year terms? Because that's  
20 what I got. That is what Senator Gibson could  
21 have. So it really -- it's logically doesn't  
22 happen the way we think it is going to be. Is  
23 it fair to have somebody with less than eight  
24 years? Now, that is the question, and, you  
25 know, I just pose that to you.

1 SENATOR GAETZ: Good point, Senator Wise.

2 Why don't you proceed?

3 MR. GUTHRIE: That is it then on numbering  
4 options.

5 SENATOR GAETZ: And let me just say that  
6 individual Senators who have suggestions,  
7 concerns, criticisms, proposals, we invite you  
8 to make them to professional staff or convey  
9 them to President Margolis as our Vice-Chair or  
10 to me or to the Majority or Minority Leaders,  
11 because this is an issue we will have to  
12 address in the amendment that the Committee  
13 considers, absolutely.

14 Yes, Senator Lynn.

15 SENATOR LYNN: I just feel compelled to  
16 say, all through the years, people -- Senator  
17 Thrasher had three years, he had -- each time  
18 -- some people had to run every few years.  
19 Senator Wise had to run, I don't know how many  
20 times he has run, it just happens, somebody  
21 dies --

22 SENATOR GAETZ: He's run nine times.

23 SENATOR LYNN: -- somebody quits, you  
24 know, or somebody stays -- something happens,  
25 and you cannot plan for all those incidents,

1           you just can't. You do the maps according to  
2           the best you can, you number in the fairest way  
3           you can and let the chips fall where they may.  
4           If someone is going to end up running more than  
5           somebody else, that is just a luck of the draw,  
6           and people do that. It's always been that way.  
7           So I don't think that is a great big worry.

8                         SENATOR GAETZ: Good observation. And,  
9                         Senator Detert, we will let you give the  
10                  benediction to this portion of the program.

11                  SENATOR DETERT: That is because I am  
12                  generally brief, and I will be again, but I  
13                  disagree, Chair, with the staff's conclusion  
14                  about numbering them in an orderly way from  
15                  west to east, starting in the Panhandle, going  
16                  1, 2, 3, 4, 5, 6. Yes, along the way, some  
17                  decisions are going to have to be made, but I  
18                  don't think it would involve gerrymandering  
19                  decisions. But if you are going to throw darts  
20                  at a board or have lottery balls pop up and you  
21                  are going to start with the first district at  
22                  the top of the Panhandle being No. 37, I think  
23                  a rational person is going to look at that and  
24                  go, "How the heck did they come up with this,  
25                  did they just throw darts at a board," which we

1           could probably legally do. I just think it  
2           makes more sense to have it sequentially and  
3           just have a pattern and, once again, let the  
4           chips fall where they may, or do whatever  
5           Senator Latvala says, you start No. 1 at the  
6           Panhandle, No. 40 is Key West and you fill in  
7           the middle, and that is pretty random.

8           SENATOR GAETZ: Thank you. Thank you for  
9           that suggestion.

10           Okay, Mr. Guthrie --

11           MR. GUTHRIE: One point of clarification  
12           on that, if I may, Mr. Chairman?

13           SENATOR GAETZ: Sure.

14           MR. GUTHRIE: The -- I believe with  
15           whatever scenario we use or option the Senate  
16           chooses to use for numbering its district, we  
17           will follow some sort of an orderly pattern  
18           from the -- you know, one end of the state to  
19           the other, so that voters won't be confused by  
20           having Senate Districts 2, 18 and 37 in their  
21           -- in their area. But you could accomplish  
22           that by determining through a game of chance  
23           which districts get odd and which get even, and  
24           then coming back and manually numbering the  
25           districts systematically, as you discussed,

1           which is kind of what we have in the -- in the  
2       current map. So we have Districts 1, 3 and 5  
3       in the Panhandle, for instance, in the plan  
4       that the Senate passed during regular session.

5           SENATOR GAETZ: Okay.

6           MR. GUTHRIE: The next several slides are  
7       all in your meeting packet. We don't have to  
8       go into a whole lot of detail, but what we are  
9       going to do is focus briefly on the districts  
10      where the Supreme Court did express issues.

11          The first was in the Panhandle where the  
12       Senate followed political and geographic  
13       boundaries to create a coastal district and  
14       also to create a rural district. The Supreme  
15       Court said that the horizontal orientation of  
16       Panhandle districts violates compactness and  
17       utilization of political and geographic  
18       boundaries, and it sacrificed compactness,  
19       which is a constitutional imperative, to keep  
20       coastal communities together. So the Court  
21       took issue with Districts 1 and 3, and that is  
22       one area that we will be looking at to modify  
23       the plan.

24          The next is in northeast Florida where the  
25       Court expressed issues with Districts 6 and 9.

1           As Senator Gibson mentioned earlier, part of  
2           the issue there was that there was not a  
3           regression study or a functional analysis  
4           performed on the districts, but the Court also  
5           found that District 6 sacrifices compactness  
6           when not necessary to avoid a conflict with the  
7           minority voting protection provision, okay, and  
8           further found that a district based solely in  
9           Duval County would be much more compact and  
10           would likely afford black voters the  
11           opportunity to elect candidates of choice.

12           SENATOR GAETZ: Let's stop here for a  
13           second. Any questions about what the Court  
14           found as to northwest and northeast Florida?  
15           Any questions as to the Court's findings?

16           Okay. Please move on.

17           MR. GUTHRIE: Okay. And the Court also  
18           mentioned that District 9, which is to the east  
19           of District 6, likely will be impacted also  
20           when -- if District 6 is made into a Duval-only  
21           district.

22           The next area that the Court looked at was  
23           Senate District 10 in the Orlando area. The  
24           territory east of Orlando, and this territory  
25           represents about 160,000 persons, the Court

1 referred to that as a -- an appendage and could  
2 not understand the basis for the district being  
3 that shape. They mentioned that Districts 12  
4 and 14, the adjacent minority districts, also  
5 should be considered as part of reviewing  
6 District 10. So District 10 is visually  
7 non-compact as a result of what they called the  
8 bizarrely-shaped appendage between Districts 12  
9 and 14, the area east of Orlando, and that it  
10 does not consistently follow any political or  
11 geographic boundary, and they -- the Court  
12 believed that it was an attempt to reach out to  
13 clearly encompass an incumbent, and, therefore,  
14 was constitutionally invalid.

15 SENATOR GAETZ: Any comments on the  
16 Court's findings as to central Florida, the  
17 central Florida district? Any comments or  
18 questions? If not, please go on.

19 MR. GUTHRIE: The next area where the  
20 Court took issue was Senate District 30 in  
21 southwest Florida. The Court recognizes that  
22 Senate District 30 is adjacent to the Section 5  
23 minority opportunity district, 40, that comes  
24 out of Miami-Dade County and includes Monroe,  
25 Collier and Hendry Counties, which are all

1           three Section 5-covered jurisdictions, but the  
2           Court noticed that the district connects to  
3           Cape Coral along Ft. Myers Beach and Sanibel,  
4           and determined that a more compact shape could  
5           have been drawn in that -- in that area.

6           SENATOR GAETZ: Okay. Southwest Florida,  
7           the southwest Florida finding by the Court, any  
8           comments or questions? Any comments or  
9           questions? Okay.

10          MR. GUTHRIE: A conclusion of the Court  
11          here is that intending to tie coastal  
12          communities together, something that this  
13          Committee considered extensively in its  
14          deliberations, is not a constitutional  
15          justification for departure from Tier 2  
16          standards.

17          The next area where the Court found an  
18          objection was with Districts 34 and 29 in  
19          Broward and Palm Beach Counties. What the  
20          Court concluded was that the districts were  
21          drawn to favor an incumbent and a political  
22          party by keeping District 29 essentially the  
23          same as its predecessor district. So they saw  
24          that District 34 goes from Ft. Lauderdale to  
25          West Palm Beach, and that creates an area of

1 population to the east which is -- cannot be in  
2 another district and, therefore, is in District  
3 29, and that the Court found was a problem  
4 because District 29 leans Republican and is in  
5 an area of the state that is largely  
6 Democratic. So the Court believed that it  
7 would be possible to create a -- new  
8 configurations of districts in Broward and Palm  
9 Beach County where overall the districts would  
10 be more compact and more neutral.

11 SENATOR GAETZ: Comments or questions on  
12 the southeast portion of the map? Any  
13 questions or comments as to the Court's  
14 findings, any observations? If not --

15 MR. GUTHRIE: And --

16 SENATOR GAETZ: Go ahead.

17 MR. GUTHRIE: And the last area was the  
18 City of Lakeland. The City of Lakeland is  
19 outlined in red on the screen here. A part of  
20 the City of Lakeland is in District 24, part of  
21 the City of Lakeland is in District 16. What  
22 the Court concluded, as Mr. Bardos stated  
23 earlier, was the Senate failed to adhere to any  
24 consistent definition of political and  
25 geographic boundary. This is especially

1 evident because, in the case of District 24,  
2 the Senate placed inland Lakeland with coastal  
3 communities of Manatee County. And so the  
4 Court did not find District 24 to be invalid,  
5 but they suggested that the Senate look at that  
6 area in its review of the new map.

7 SENATOR GAETZ: Any comments or questions  
8 on the Lakeland issue? Is Senator Dockery  
9 here?

10 SENATOR DOCKERY: Yes.

11 SENATOR GAETZ: Senator Dockery, I know  
12 that you had had some -- you had wanted to  
13 share some ideas about that area. You are  
14 recognized even though you are not on the  
15 Committee. We are delighted that you are here.

16 SENATOR DOCKERY: Thank you, Mr. Chairman.

17 I would just say to the extent that we  
18 could put the City of Lakeland in one district,  
19 Polk County has six hundred -- over 600,000  
20 individuals, it is cut into four Senate  
21 districts, if we can get that down to two or  
22 three Senate districts and keep Lakeland  
23 together, I think that that makes a lot more  
24 sense and leads to less spread-out districts  
25 for Polk. But I am certainly -- I certainly

1 understand that that will create a domino  
2 effect, so I am going to sit down and meet with  
3 staff afterwards to see how we can address that  
4 issue.

5 SENATOR GAETZ: Good. Thank you very  
6 much.

7 Any other comments from any Senators on  
8 the Lakeland matter?

9 Mr. Guthrie.

10 MR. GUTHRIE: So that is the conclusion of  
11 our overview of the prescriptions and  
12 conclusions from the opinion that I included in  
13 this presentation.

14 The next steps for the Committee, as the  
15 Chairman noted on the floor, by 12:00 noon on  
16 Saturday, the Chairman plans to have an  
17 amendment addressing or conforming to the  
18 judgment of the Court on the Senate  
19 redistricting website. By 12:00 noon Monday,  
20 the Senate determined timely amendments will be  
21 offered by other members of the Senate. This  
22 Committee will meet again next Tuesday from  
23 nine o'clock until six o'clock for a  
24 Reapportionment Committee meeting. We will  
25 consider a plan conforming to the judgment of

1           the Court. We will also need to consider at  
2           that meeting and you will need to determine at  
3           that meeting a method for numbering the  
4           districts consistent with the opinion of the  
5           Court. Then on -- so we will have a committee  
6           report coming out on Tuesday night. We would  
7           like -- and the Senate voted on the floor this  
8           afternoon that floor amendments will be filed  
9           by noon on Wednesday, March 21st, and then the  
10          Senate will convene and take up as a special  
11          order Senate Joint Resolution 2-B on Thursday,  
12          March 22nd. That session will start at  
13          nine o'clock in the morning and continue until  
14          completion. If necessary, the Senate will  
15          convene again on Friday, March 23rd, for the  
16          third reading and final passage of Senate Joint  
17          Resolution 2-B.

18           SENATOR GAETZ: Mr. Guthrie, would you go  
19          back to the slide just previous to that? I  
20          would like to just take a moment so that we all  
21          have the same understanding. The Senate this  
22          morning decided that amendments would be filed  
23          by twelve o'clock noon Monday, and that is an  
24          amendment to, in effect, the resolution that we  
25          placed in play this morning on the Senate

1 floor.

2 I want to make sure that we give everyone  
3 an opportunity to review, comment and offer  
4 their suggestions. So between now and the time  
5 that a Chairman's amendment is put forth in  
6 this Committee, you all have an open invitation  
7 to contact professional staff, to contact your  
8 Majority and Minority Leaders, to contact the  
9 Vice-Chair of the Committee, myself, with any  
10 input that you have. We will govern those  
11 conversations by the same rule that we have  
12 governed other conversations with members of  
13 the Senate and House, and that is that we will  
14 not take any discussion -- and none has been  
15 offered, and I have been very proud of  
16 Democrats and Republicans in this regard -- we  
17 will not take any discussion about what is good  
18 for me or what is bad for me, or what is good  
19 for somebody who might run or what is bad for  
20 somebody who might run. Instead, our  
21 conversation will be limited to how can we  
22 approach the Supreme Court's ruling with a  
23 remedy that will be compliant with the Supreme  
24 Court's opinion, how can we approach the facts  
25 of the matter, not to argue with the Court, not

1 to talk about what is good or bad for anybody,  
2 challenger or incumbent, or any political  
3 party, but how can we approach this problem in  
4 a way that will bring us a compliant response  
5 to the Supreme Court. But we invite, request  
6 and solicit your opinions and your input in  
7 that regard.

8 Now, in an abundance of what I hope the  
9 Committee will agree is openness to suggestion,  
10 even though the amendment deadline is noon on  
11 Monday for the Reapportionment Committee  
12 meeting the next day, I will supply the -- a  
13 Chairman's amendment -- and it is called that  
14 even though it will be a committee amendment --  
15 a Chairman's amendment at noon on Saturday so  
16 that everyone has a chance to review it. If  
17 you don't like it, you have a chance to post  
18 amendments to it. So my suggestions or the  
19 Committee's suggestions taken together will be  
20 posted 48 hours before the amendment deadline,  
21 and then you have an amendment deadline that  
22 relates to the Committee's meeting the next  
23 day. Is everybody clear on what our time frame  
24 is? Because if you have ideas, suggestions or  
25 counter-proposals, we want to give everyone an

1 opportunity to make those available to the  
2 Committee and to the public and to the press.  
3 Any -- anything that we get in the nature of a  
4 proposal, as we mentioned on the floor this  
5 morning, has to show the consequences  
6 statewide, if there are any, and then we also  
7 want to make it available so that the public  
8 can comment on it.

9 Senator Gibson, you had a question, ma'am,  
10 or an observation?

11 SENATOR GIBSON: Thank you, Mr. Chair.

12 Just for clarification, the Chairman's  
13 amendment, which is you, Mr. Chair, will go --  
14 come out on Saturday, and I wasn't sure if you  
15 said we have until then to give input to you  
16 and our various leaders and the Committee to be  
17 included in the Chair's amendment? I mean, if  
18 that is the case, one time says the amendment  
19 will be posted noon or earlier, and then the  
20 other says -- on our paper it says no later  
21 than noon. So I am trying to figure out if  
22 there is, in fact, opportunity for input before  
23 it is posted, what is the deadline for that  
24 input. And then the second part of my question  
25 is, since this is a Chairman's amendment on

1 Saturday, on Monday for the committee amendment  
2 deadline, is that to the Chairman's amendment,  
3 which will then become the committee amendment?

4 I am a little confused.

5 SENATOR GAETZ: I apologize, Senator  
6 Gibson. You know, this happens once every ten  
7 years, so we don't have -- we don't have a lot  
8 of people except Mr. Guthrie and Senator  
9 Latvala who can -- and President Margolis who  
10 can give us the history lesson here, but let me  
11 see if I can explain it.

12 It is called a Chairman's amendment  
13 because somebody has to offer it, and the  
14 Committee can't offer it until the Committee  
15 votes on it, and the Committee may vote it down  
16 or may change it or may accept it. So you make  
17 an excellent point. If you -- I would love to  
18 have input, broadly speaking, from anyone who  
19 cares to provide it to what we are calling a  
20 Chairman's amendment.

21 Now, if you have input, I wouldn't wait  
22 until eleven o'clock a.m. Saturday to provide  
23 it, just for logistical reasons. So I would  
24 ask that if you have input, please give it to  
25 us today, tomorrow, Friday, let us know what

1           your thinking is, and if we can incorporate it,  
2           we will.

3           Just one second, Leader, and I will get to  
4           you as soon as I answer the second part of  
5           Senator Gibson's question, if I can.

6           Then at noon on Monday, that is an  
7           opportunity -- people may look at the  
8           Chairman's amendment and say, you know, "I  
9           don't like it very much, they didn't take my  
10          input, I've got a better idea, I would like to  
11          amend the Chairman's amendment." And so file  
12          that amendment by noon on Monday, and then at  
13          our committee meeting on Tuesday, we will have  
14          a series of votes. We will explain what we are  
15          calling a Chairman's amendment, which will  
16          certainly have more authors than one, and then  
17          we will take up any amendments to the  
18          Chairman's amendment and then develop, in  
19          effect, a melded proposal that the Committee  
20          hopefully would agree to, and we will take that  
21          to the floor as a committee substitute. Does  
22          that make sense?

23           Okay. And I apologize, Leader Gardiner,  
24          please, you are recognized.

25           SENATOR GARDINER: Thank you, Mr.

1 Chairman, and along those same lines, is it  
2 possible after the Chairman's amendment is  
3 filed if staff would make themselves available  
4 over the weekend to help the members if they  
5 need help in preparing an amendment to that  
6 particular amendment? And the second part of  
7 that, Mr. Chairman, is I think one thing that  
8 would be helpful, too, is I think everybody has  
9 a different opinion regarding what the Florida  
10 Supreme Court has told us, and for those of us  
11 that may want to draft something, having access  
12 to all of the legal team as a member of the  
13 Committee would also be helpful, just to make  
14 sure that we are staying within the confines  
15 that you, Mr. Chairman, and the Florida Supreme  
16 Court has provided us. I think that would be  
17 very helpful, too. So if that were available  
18 to us over the weekend, I think it would make  
19 it a much -- a very smooth process.

20 SENATOR GAETZ: Thank you, Leader  
21 Gardiner. The answer to the first part of the  
22 question is yes, and that is that you certainly  
23 would have access to professional staff to help  
24 in the crafting of amendments to the amendment.  
25 In fact, we would strongly encourage -- it is

1 not required. If you don't want to deal with  
2 professional staff, that is fine, but we would  
3 certainly encourage it, because that way your  
4 amendment can be -- can be technically correct  
5 and won't be discarded because of some  
6 technical imperfection. So for your own  
7 reasons and your own purposes, I would urge you  
8 to do that.

9           Secondly, we are operating on a short  
10 leash here, and so if we have 40 Senators who  
11 all want to meet with John Guthrie, then we are  
12 going to have a problem, because, you know, we  
13 can keep him awake, we can pump him full of  
14 coffee, but we can't -- each Senator can't have  
15 a three-hour meeting with John Guthrie and meet  
16 the timeline that the Constitution lays down.  
17           But within reason, we certainly want to  
18 accommodate you. Mr. Bardos is internal  
19 counsel to the Committee. He is available  
20 starting now. I know that members -- some  
21 members have already talked with Mr. Guthrie  
22 and with committee staff, that is great. We  
23 will be as available as possible.

24           At some point, we will have to -- we will  
25 have to actually take pen to paper, and I think

1 Senator Gibson was getting to that earlier, and  
2 that was, you know, when do we quit taking  
3 input and start drafting a Chairman's  
4 amendment. I would say that we will start  
5 drafting a Chairman's amendment today, but we  
6 will take input as we go along. We will  
7 probably -- Mr. Guthrie, from a -- just from a  
8 technical standpoint to make sure we get things  
9 up on the website and we have all the technical  
10 issues dealt with, when would you say you are  
11 not going to take anymore phone calls from me?

12 MR. GUTHRIE: It is -- depending on how  
13 close we want to cut it, it is somewhere  
14 between ten and eleven o'clock on Saturday  
15 morning.

16 SENATOR GAETZ: Well, let's say -- let's  
17 say if you could please get to Mr. Guthrie over  
18 the weekend, as Leader Gardiner has indicated,  
19 today, tomorrow, the next day, over the  
20 weekend, that would be very helpful and allow  
21 Mr. Guthrie time to make sure that we have a  
22 technically perfected proposal to lay before  
23 you. So if you have ideas now, now is a good  
24 time, if you have ideas this afternoon, this  
25 afternoon is a good time, but if you wait until

1 late Saturday morning, you may have to file an  
2 amendment to the amendment, which is entirely  
3 permissible as well.

4 Senator Montford.

5 SENATOR MONTFORD: Thank you, Mr. Chair.

6 It is on another subject, not this one.

7 SENATOR GAETZ: Sure. Before we get to  
8 any other subjects, are we clear on the  
9 scheduling? Are we clear on the scheduling?  
10 Does anybody have any questions about the  
11 scheduling?

12 If not, Senator Montford, you are  
13 recognized.

14 SENATOR MONTFORD: Thank you, Mr. Chair.

15 Senator Storms this morning on the floor  
16 brought up an excellent point, and that was  
17 this Committee, under your leadership, has gone  
18 to extraordinary length receiving public input  
19 and all, and I think you said this morning the  
20 staff had already thought about that. Have you  
21 shared that today and I missed it or -- in  
22 terms of how do you -- how do you respond to  
23 that?

24 SENATOR GAETZ: Before midnight tonight,  
25 we will send an e-mail to every single person

1 who gave us their e-mail address, and that is  
2 approaching 5,000 people, saying we are in  
3 extraordinary special session, here is a link  
4 to the Supreme Court's opinion, here are the  
5 issues that the Supreme Court -- we'll provide  
6 a link to this presentation that you have seen  
7 today, all of the slides, and we will -- we  
8 will indicate that we are open for business in  
9 terms of public input. All the way through the  
10 process, all the way until the last vote by the  
11 last member of the House is recorded, we are  
12 open for business for public input. We will  
13 take public input today in our last few minutes  
14 of this meeting, and I would hope that next  
15 week when the Committee meets, if there are  
16 individuals from interest groups or political  
17 parties or just private citizens who would like  
18 to share their thoughts in person, we will take  
19 that as well.

20 SENATOR MONTFORD: Thank you, Mr. Chair.

21 SENATOR GAETZ: Other comments about the  
22 process? Yes, sir, Senator Latvala.

23 SENATOR LATVALA: Let's get back to  
24 numbering for a minute, Mr. Chairman. The  
25 Chairman's amendment that comes out on

1 Saturday, I think I understood you to say we  
2 weren't going to decide how we were going to  
3 number until the meeting on Tuesday. So how  
4 are we going to number the Chairman's amendment  
5 that comes out on Saturday?

6 SENATOR GAETZ: We are not going to decide  
7 anything until the meeting of the Committee,  
8 but the Chairman's amendment will have a  
9 proposed numbering system.

10 SENATOR LATVALA: Okay. So the Chairman's  
11 amendment will be whatever the Chairman  
12 decides -- will reflect the decision that you  
13 are proposing for how the numbering is to be  
14 done?

15 SENATOR GAETZ: We are going to take --  
16 we've gotten a great deal of input today. It's  
17 been varied. Some of the input has been  
18 inconsistent, as is expected, we have had  
19 different opinions today on the numbering  
20 system. We will take more input as long as  
21 that input is provided by members of the  
22 Committee, by the public. At some point, as  
23 Chairman, I have to propose an amendment, and  
24 so my amendment will include a proposal for a  
25 numbering system, which the Committee then can

1 accept, change, throw over its shoulder, and  
2 hence the need for an amendatory process in the  
3 Committee.

4 SENATOR LATVALA: Thank you.

5 SENATOR GAETZ: Senator Gibson, of course.

6 SENATOR GIBSON: Thank you, Mr. Chair.

7 And in terms of all of the tiers and the  
8 functional analysis as the Chairman's amendment  
9 comes together, are we going to have the data  
10 that backs up the changes included in the  
11 amendment or is sent to us or -- I think that  
12 probably helps us to be a little more  
13 deliberative in suggestions we may make. How  
14 is that particular part going to be handled?

15 SENATOR GAETZ: Mr. Guthrie.

16 MR. GUTHRIE: The data that the House used  
17 for conducting its functional analysis and that  
18 the Supreme Court referred to in its opinion is  
19 all publicly available on the House website, so  
20 it is available to everyone now, and we will be  
21 using that data and perhaps some other data to  
22 conform with the judgment of the Court.

23 SENATOR GAETZ: Other comments or  
24 questions? Other comments or questions? Any  
25 other comments or questions having to do with

1           the work of this Committee, with the substance  
2           of the reapportionment issues that are before  
3           us before we turn to public comment?

4           Leader Rich, may I turn to you for any  
5           concluding comments you might want to make?

6           SENATOR RICH: Thank you, Mr. Chair.

7           I really don't have, you know, much to  
8           add. I just -- I just feel, you know, we have  
9           been given direction by the Supreme Court, and  
10          it is our responsibility now to create a plan  
11          that complies with the Constitution and with  
12          the will of the voters, and I hope that we will  
13          in the end do that.

14          SENATOR GAETZ: Thank you very much.

15          Leader Smith, any comments?

16          SENATOR SMITH: No.

17          SENATOR GAETZ: Leader Gardiner. I am  
18          afraid you have a bad mike, Leader.

19          SENATOR GARDINER: I was just commenting  
20          I've been gone for a week and I've already  
21          forgotten how to work the microphone.

22          Thank you, Mr. Chairman, and I appreciate  
23          your leadership on this and the openness to the  
24          members. And, you know, obviously I am not an  
25          attorney. When I read the opinion, there is --

1 I have a little bit different opinion on some  
2 others, but the only thing I would just add on  
3 the numbering, I know the Florida Supreme Court  
4 believes that we all want to serve additional  
5 years, but please keep in mind that there are  
6 some that are more than content just serving  
7 another term and finishing out. So don't  
8 everybody assume that everybody wants to be  
9 away from their family even longer amount of  
10 time, so just keep that in mind. But thank  
11 you, Mr. Chairman, for all your hard work, and  
12 we look forward to seeing the Chairman's  
13 amendment.

14 SENATOR GAETZ: Thank you very much,  
15 Leader.

16 Madam President, may I turn to you for any  
17 comments you might wish to make as our  
18 Vice-Chair?

19 SENATOR MARGOLIS: I thought this was an  
20 excellent meeting, it gave us an incredible  
21 amount of information, and I have to tell you  
22 that it happens really with every  
23 reapportionment, there's issues that have to be  
24 taken care of. I think it is a rare  
25 opportunity to take care of the issues that the

1           Supreme Court has sent us, and I will be  
2           delighted if we can get this done in the 15  
3           days. Thank you.

4           SENATOR GAETZ: As will I. Thank you very  
5           much, Madam President.

6           Are there members of the public who wish  
7           to speak to the Committee? Any members of the  
8           public wish to provide testimony as to the work  
9           of this Committee? Third call, any members of  
10          the public?

11          If not, President Margolis moves we rise.

12          (Whereupon, the proceedings were  
13          concluded.)

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## 1                   C E R T I F I C A T E

2       STATE OF FLORIDA      )

3       COUNTY OF LEON        )

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

8                   That the foregoing pages 2 through 91 represent  
9       a true, correct, and complete transcript of the tape-  
10      recording;

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

15                  Dated this 28th day of March, 2012.

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19                  CLARA C. ROTRUCK

20                  Notary Public

21                  State of Florida at Large

22                  Commission Expires:

23                  November 13, 2014

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