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SIMULTANEOUS MEETING OF SENATE COMMITTEE ON
REAPPORTIONMENT
AND HOUSE SELECT COMMITTEE ON REDISTRICTING
AUGUST 7, 2014

Transcribed by:
CLARA C. ROTRUCK
Court Reporter

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

2 CHAIRMAN GALVANO: Good afternoon, members,
3 let's take our seats if you would, please.

4 Okay. At this time I would like to call to
5 order the Senate Committee on Reapportionment and
6 ask the Senate Administrative Assistant to please
7 call the roll.

8 SENATE ADMINISTRATIVE ASSISTANT: Senator
9 Galvano.

10 CHAIRMAN GALVANO: Here.

11 SENATE ADMINISTRATIVE ASSISTANT: Senator
12 Smith.

13 SENATOR SMITH: Here.

14 SENATE ADMINISTRATIVE ASSISTANT: Senator
15 Bradley.

16 SENATOR BRADLEY: Here.

17 SENATE ADMINISTRATIVE ASSISTANT: Senator
18 Gibson.

19 SENATOR GIBSON: Here.

20 SENATE ADMINISTRATIVE ASSISTANT: Senator Lee.

21 SENATOR LEE: Here.

22 SENATE ADMINISTRATIVE ASSISTANT: Senator
23 Montford.

24 SENATOR MONTFORD: Here.

25 SENATE ADMINISTRATIVE ASSISTANT: Senator

1 Simmons.

2 SENATOR SIMMONS: Here.

3 SENATE ADMINISTRATIVE ASSISTANT: They are all
4 present.

5 CHAIRMAN GALVANO: Thank you. Chairman
6 Corcoran, I will defer to you to roll call at this
7 point.

8 CHAIRMAN CORCORAN: Would the House please
9 call the roll?

10 HOUSE: Chair Corcoran.

11 CHAIRMAN CORCORAN: Here.

12 HOUSE: Vice-Chair McBurney.

13 REPRESENTATIVE McBURNEY: Here.

14 HOUSE: Representative Berman.

15 REPRESENTATIVE BERMAN: Here.

16 HOUSE: Representative Caldwell.

17 REPRESENTATIVE CALDWELL: Here.

18 HOUSE: Representative Cummings.

19 REPRESENTATIVE CUMMINGS: Here.

20 HOUSE: Representative Fullwood.

21 REPRESENTATIVE FULLWOOD: Here.

22 HOUSE: Representative McGhee.

23 REPRESENTATIVE MCGHEE: Here.

24 HOUSE: Representative Metz.

25 REPRESENTATIVE METZ: Here.

1 HOUSE: Representative Oliva.

2 REPRESENTATIVE OLIVA: Here.

3 HOUSE: Representative Passidomo.

4 REPRESENTATIVE PASSIDOMO: Here.

5 HOUSE: Representative Rodriguez.

6 REPRESENTATIVE RODRIGUEZ: Here.

7 HOUSE: Democratic Ranking Thurston.

8 REPRESENTATIVE THURSTON: Here.

9 HOUSE: Representative Young.

10 REPRESENTATIVE YOUNG: Here.

11 HOUSE: We have a quorum.

12 CHAIRMAN GALVANO: Thank you, Senators and
13 House members. Welcome to the simultaneous meeting
14 of both the House and Senate Committee on
15 Reapportionment and Redistricting.

16 As you saw in memos earlier this week, today
17 we are going to spend some time discussing the
18 litigation with our legal counsel who are here with
19 us today. We will have an opportunity to ask some
20 questions, followed by some discussion, and then we
21 will open it up for public comment.

22 But before we go there I would first like to
23 thank Chairman Corcoran for his hard work already.
24 Even though it has been a very short process given
25 the time constraints that we are facing, we've had

1 to work very hard, very quickly already to make
2 some progress and get ahead of the curve so that we
3 can make some decisions as a committee and also as
4 a Legislature.

5 Also the Senate President and Speaker
6 Weatherford for their leadership and guidance in
7 putting this together.

8 Probably by now I have filed an amendment to
9 Senate Bill 2-A, which is an amendment that will be
10 taken up tomorrow. We intend to have a full day
11 tomorrow on the Senate Committee to discuss 2-A and
12 the amendment which is the proposed remedial plan
13 that I put forward as Chair, but certainly also to
14 consider any other amendments that may be filed or
15 have been filed when we convene tomorrow in the
16 committee.

17 And so, with that, Chairman Corcoran, do you
18 have any comments and then we will go into the
19 presentation by counsel?

20 CHAIRMAN CORCORAN: I would like to say it was
21 a pleasure working with you, Senator, and I think
22 that -- you have all seen our memo. I think we
23 have addressed some of the conversations that we
24 have had to date. We can get into that in more
25 detail, but look forward to working with you and

1 complying with the court order and creating a very
2 constitutional and a map that answers the concerns
3 of the Judge.

4 CHAIRMAN GALVANO: Okay. We will now move
5 forward, and I will start by recognizing Justice
6 Raoul Cantero. He is counsel for the Florida
7 Senate. Good morning, Justice. We appreciate you
8 being here, and you are recognized to give us an
9 update as to where we are.

10 JUSTICE CANTERO: Thank you, Chair Galvano.
11 It's my privilege to represent the Florida Senate
12 and to present to you this afternoon. Can
13 everybody here me okay? Is this mike working? Now
14 is it working?

15 CHAIRMAN GALVANO: Yes. Now it is.

16 JUSTICE CANTERO: I understand that there may
17 be some members here who were not present in 2012.
18 So I am going to be -- at least start being very
19 basic about what has happened in the past and how
20 we got to this point, and then Mr. Meros, the House
21 Counsel, will kind of talk to you about where we
22 are going to go from here.

23 Under Article I, Section 4 of the Florida
24 Constitution, the Legislature has a duty to
25 reapportion Florida's Congressional districts after

1 each decennial consensus.

2 Following the 2010 census, Florida received
3 two additional Congressional seats. So in 2000, we
4 had 25 seats and, starting in 2010, we would have
5 27 seats.

6 And on the wall is a depiction of the map as
7 it existed in 2002, as it was drawn in 2002, which
8 we call the benchmark plan. You see the letters
9 benchmark over there. You will see this is the
10 plan that we are working off of, and pay particular
11 attention to District 3 in the benchmark plan,
12 because we will be talking about that district.
13 That is the green district that comes down from
14 Jacksonville through Gainesville and to Orlando.
15 We will be discussing that district more in the
16 next couple of days.

17 As some of you know in 2010, the Constitution
18 was amended to add two particular requirements
19 regarding redistricting. One has to do with the
20 Florida legislative districts and the other nearly
21 identical provision has to do with the
22 Congressional districts, and each of these
23 amendments contain two parts.

24 That's hard to read, but I will read it for
25 you. Part A in the Congressional Amendment, which

1 is Article III, Section 20 provides for a few
2 requirements. The first is no apportionment plan
3 or individual district shall be drawn with the
4 intent to favor or disfavor a political party or an
5 incumbent.

6 And let me just stop there for a second. We
7 call that the first requirement. You cannot
8 disfavor -- you cannot favor or disfavor either a
9 political party or an incumbent. Now, the Florida
10 Supreme Court in a case we call Apportionment One
11 from March of 2012, when it was considering the
12 Florida legislative districts, warned that the
13 Constitution prohibits intent but not effect, and
14 every time you draw or redraw a line there is going
15 to be a political effect. What is prohibited by
16 the Constitution is an intent to either favor or
17 disfavor a political party or an incumbent.

18 When we get to the next clause here it says,
19 "Districts shall not be drawn with the intent or
20 result of denying or abridging the equal
21 opportunity of racial or language minorities to
22 participate in the political process, or to
23 diminish their ability to elect representatives of
24 their choice." So that clause is intended to
25 incorporate into the Florida Constitution Sections

1 2 and 5 of the Federal Voting Rights Act which
 2 protect minorities from diminishment in their
 3 ability to elect representatives of their choice,
 4 and also from diluting their vote so that, instead
 5 of having a district where they have a majority,
 6 dilute the voting to two districts with less than a
 7 majority in each. So this Constitutional provision
 8 is intended to incorporate those minority voting
 9 protections into the Florida Constitution.

10 Then, third, districts shall consist of
 11 contiguous territory. Those are the three
 12 requirements. The contiguous territory requirement
 13 is not at issue in this case. And that is the
 14 first section of the amendment and that is what we
 15 call the Tier-One requirements. Those are
 16 requirements that must be abided by.

17 Then Section B we call the Tier-Two
 18 requirements and we call them Tier Two because they
 19 are subordinate to the requirements of Tier One.
 20 Let me go through some of those.

21 Unless compliance with the standards in this
 22 subsection conflicts with the standards in
 23 Subsection (1)(a) or with Federal law, districts
 24 shall be as nearly equal in population as
 25 practicable. So let me stop right there. So

1 districts have to be as equal in population as
2 practicable. For purposes of Federal law and
3 Federal Congressional seats, as nearly equal as
4 possible means essentially equal. There can be
5 virtually no deviation in population in the
6 districts.

7 Each district in Florida right now with 27
8 seats and the population we have has to contain
9 somewhere around 696,345 people, and you can only
10 deviate to 344 or 346 for each district. And,
11 again, that is not at issue here, but that is
12 something that you need to know and that is why it
13 makes it particularly challenging to draw
14 Congressional districts because each district has
15 to be equal in population. So, when you change one
16 district, you are not changing just one, you are
17 changing the districts around it, because now you
18 have to either add or subtract population from
19 those districts.

20 The second requirement in Tier Two is
21 districts shall be compact, and I will talk a
22 little bit more about that in just a second. But
23 essentially it means kind of what you may just
24 really understand it to be, which is as near as you
25 can given the geographical makeup of the state as

1 to a rectangle or a circle. Of course, you can't
2 achieve that, but you are trying to get as close to
3 that as you can.

4 And then districts shall, where feasible,
5 utilize existing political and geographical
6 boundaries. And the Florida Supreme Court has
7 interpreted that to mean political boundaries are
8 county boundaries and city boundaries, and
9 geographical boundaries are things such as rivers,
10 State highways, Federal highways, things like that.
11 So as much as possible the boundaries have to use
12 either a geographic or a political boundary.

13 Now the Florida Supreme Court also has said,
14 or Subsection (C) of this Constitution also
15 provides that, within a particular tier, the
16 requirements are roughly equal to each other. In
17 other words the compactness requirement doesn't
18 trump geographic and political boundaries or
19 vice-versa, and in Tier One standards they don't
20 trump each other. They are equal among themselves
21 within that tier, but Tier One is more important
22 than Tier Two. So, if you have to sacrifice Tier
23 Two standards like compactness in order to comply
24 with Tier One standards, like minority voting
25 protections, then that is okay.

1 You are going to hear a lot of things, a lot
2 of talk in the next couple of days about
3 compactness and compactness measurements. There
4 are several ways to measure compactness. The first
5 and most obvious way is what does it look like to
6 the eye? Does it look compact to the eye or not?
7 And the courts have looked at the visual
8 compactness, they call it optical compactness,
9 things like that. That, of course, is very
10 subjective. You can't really measure that, except
11 by looking at it and seeing, does this look compact
12 or not?

13 Then other measures of compactness exist. Two
14 that the Florida Supreme Court has especially
15 blessed are called the Reock score and the convex
16 hull score. Those are two different kinds of
17 measurements of compactness and they are explained
18 in this graph here.

19 If you look at the graph to the left which
20 measures the Reock compactness, it is what is the
21 smallest circle that can encompass that particular
22 district? And you divide the area of the district
23 by the area of the circle and you come up with a
24 compactness score. It will always be less than
25 one, because the district will always be smaller

1 than the circle around it unless it is, in fact, a
2 circle.

3 So when you look at Reock scores they
4 generally talk about .25, .38, .4, measures of that
5 nature, never approaching one. The convex hull
6 score is going to be a higher score, because what
7 that measures is if you can place a rubber band
8 around the district so that there are straight
9 lines going from every line to every line, in the
10 district and then again you measure the area of the
11 district divided by the area of that polygon, then
12 you get a convex hull score. So convex hull scores
13 are generally higher than a Reock score, and those
14 are just different ways of looking at compactness.

15 Depending on the district, it may have a very
16 high but very misleading measure of compactness.
17 For example, a district that is a perfect rectangle
18 that measures one inch by 100 miles would have a
19 perfect convex hull score, because the rubber band
20 would go exactly around that rectangle, but it
21 would be very non-compact if one inch by 100 miles.

22 So these measurements are ways of determining
23 compactness, but neither is exclusive and you
24 really have to take into account everything,
25 including the visual compactness of a district.

1 So after the 2010 Census, the Legislature got
2 together and, as you may recall, the House and the
3 Senate developed the State Legislative districts,
4 but they were also responsible for developing the
5 Congressional districts. And the House and Senate
6 worked independently and developed their own maps
7 of the Congressional districts, and came up with --
8 for the House, we call it the semifinal plan for
9 the House was map number 9043, and the semifinal
10 plan for the Senate was 9014, but now they had to
11 reconcile those two maps and come up with a map
12 that would be the Legislature's map for the
13 Congressional districts for 2012.

14 So the Chairs from the two committees,
15 redistricting committees met along with staff and
16 they came up with a third version that would be the
17 Legislature's map which the Legislature enacted on
18 February 9th of 2012. On the extreme left you will
19 see 9014. In the middle you will see 9043, and
20 then at the extreme right you will see 9047 which
21 is the enacted plan.

22 Again, if you look at -- in the enacted plan,
23 pay particular attention to what is now District 5
24 which goes from Jacksonville to Orlando and
25 District 10 which is just to the west of District 5

1 in the Orlando/Orange County area. If you look at
2 the left and the middle maps you will see that
3 there are many areas in which they were very
4 similar and few, if any, changes had to be made in
5 the reconciliation meeting, but there were some
6 differences that had to be worked out, and we had
7 no choice but to work out those differences because
8 we had to produce one final map that would come
9 from the Legislature. And so that is what the
10 Legislature did is adopt 9047 in February of 2012.

11 Now, as for the litigation, just hours after
12 the Legislature adopted a plan, seven individuals
13 which we now call the Romo Plaintiffs, challenged
14 the new districts in Circuit Court in Leon County,
15 and eight days later the League of Women Voters,
16 the National Council of La Raza, which later
17 dropped out of the case, Common Cause of Florida
18 and four other individuals filed their own lawsuit,
19 which we call the League of Women Voters or
20 Coalition Plaintiffs lawsuit, and those two
21 lawsuits were consolidated into one in front of
22 Judge Terry Lewis in Tallahassee.

23 These complaints allege that the districts in
24 Florida have violated the new constitutional
25 provisions of Article III, Section 20, of the

1 Florida Constitution. There was no allegation in
2 these lawsuits that there was any violation of
3 Federal law. It was all based on Article III,
4 Section 20 of the Florida Constitution.

5 Nor did the Plaintiffs claim that all
6 districts were invalid. They specifically
7 challenged 10 of the 27 Congressional districts,
8 and these were District 5, 10, 13, 14, 15, 21, 22,
9 25, 26 and 27.

10 Here you have on this slide Section 5 which we
11 talked about earlier, and I will talk a little bit
12 about it again later. Note especially there was a
13 part of District 5 towards the bottom of the
14 district in the Orlando area that juts into
15 Seminole County, Florida, and particularly into the
16 city of Sanford.

17 And note also on District 10 -- here we have a
18 better depiction of District 10. And, again, this
19 is all in the enacted map, 9047. There is a
20 portion that goes under District 5 and to the east
21 of District 5 that is still part of District 10,
22 and to the west and north of District 9 which is
23 the Orange district that you see. And the
24 Plaintiffs particularly objected to that extension.

25 The Plaintiffs also challenged Districts 13

1 and 14. They challenged the fact that 14 extended
2 across Tampa Bay into Pinellas County. These are
3 Districts 21 and 22 that the Plaintiffs challenged.
4 These are 25 and 26 and that is 15. And that is 20
5 and 25. And I misspoke. These down here are 26
6 and 27, Monroe and Dade County. That's 15, and
7 then the last one here is 25. So those were
8 basically the districts that they contested.

9 Okay. During the litigation you may have read
10 in the newspaper or you may have just kept track of
11 the case, the Plaintiffs attempted to obtain what
12 was at the time unprecedented discovery from the
13 Legislature. They sought to -- they noticed the
14 depositions of legislators and legislative staff,
15 adopting the position that there is no legislative
16 privilege in Florida.

17 The Legislature fought that discovery, signed
18 a protective order from Judge Lewis, and Judge
19 Lewis determined that there was legislative
20 privilege but it was not absolute. It was only
21 qualified and it only extended to subjective
22 thoughts and impressions and not to objective data.
23 So that legislators and staff would have to talk
24 about objective conversations and any
25 communications that did not contain subjective

1 impressions.

2 The Legislature appealed that order to the
3 First District Court of Appeals, and the First
4 District quashed that Order in its entirety and
5 said that there was a legislative privilege in
6 Florida and that the subjective-objective dichotomy
7 was unworkable, there was an absolute legislative
8 privilege, and that legislators and their staff
9 should not have to even sit for a deposition to
10 discuss the legislative process.

11 The Plaintiffs then took discretionary appeal
12 to the Florida Supreme Court. The Florida Supreme
13 Court accepted jurisdiction and held oral arguments
14 in that case in September of 2013. In December of
15 2013, the Court issued an opinion essentially
16 reverting back to Judge Lewis' understanding of the
17 privilege. It acknowledged that there was a
18 legislative privilege in Florida, that legislators
19 do have a certain privilege, but it is not an
20 absolute privilege. It protects against disclosure
21 of subjective thoughts and impressions but not
22 disclosure about objective facts.

23 So we proceeded after that with the
24 litigation. There were some legislators and some
25 legislative staff deposed in that case. There was

1 never an assertion of legislative privilege because
2 those who testified felt that they had nothing to
3 hide, and -- and so never asserting the privilege.
4 We never went back to the Judge with any concerns
5 or any disputes about the privilege.

6 The case was first set for trial in 2013. The
7 Legislature, maybe foretelling a little bit this
8 moment today, wanted to expedite the trial because,
9 although it was confident that the Court would not
10 find any of the districts invalid, if in fact the
11 Court did find any of them invalid, we would need
12 to withdraw them before the next election.

13 The Plaintiffs, however, sought several
14 continuances that the Legislature objected to. The
15 trial was postponed at the Legislature's objection
16 from June 2013 to August 2013, from August 2013 to
17 January 2014, and finally from January to May of
18 this year.

19 The trial was held from May 19 to June 4th, of
20 this year. At trial the testimony focused on the
21 development of House Plan 9043 which I discussed as
22 well as the -- and 9014 which was the Senate's
23 semifinal plan, as well as the reconciliation
24 process that led to the enacted plan. The
25 Legislature presented evidence that the enacted

1 plan was the product of negotiations and reasonable
2 trade-offs between the two chambers.

3 Because the vote-dilution standard of the
4 Voting Rights Act and the Florida Constitution
5 required the Legislature to draw up
6 majority/minority districts where certain three
7 conditions were satisfied, the Legislature believed
8 that it was appropriate to draw CD 5 -- I am just
9 going to go back there for you. That's CD 5 -- to
10 draw CD 5 to include that portion of Seminole
11 County, which, by the way, had been a part of that
12 district since 1992. And including that part of
13 Seminole County, Sanford, in District 5 resulted in
14 a modest but we thought important increase in the
15 black voting age population from 49.9 percentage to
16 50.06 percent. So it made it just above a
17 majority/minority district.

18 The appendage that the Plaintiffs called in
19 District 10 was the product of two adjacent
20 minority districts. You see District 5 on the map.
21 That would be to the east, generally, of District
22 10, but then there is that part of District 10 that
23 juts east of District 5. We have already discussed
24 that District 5 was a black majority district.

25 The other district that that part is adjacent

1 to is District 9. District 9 was a new Hispanic
2 opportunity district. It is not a Hispanic
3 majority district and has never been, but the
4 Legislature thought that it was appropriate to give
5 Hispanics an opportunity at some point to elect a
6 candidate of their choice. And so that district
7 was drawn at 41 -- somewhere over 41 percent
8 Hispanic voting age population, and it was conceded
9 that 41 percent would not give Hispanics enough
10 votes to elect a candidate of their choice today,
11 but it was believed that with time and possibly in
12 the very near future, given population shifts and
13 the growth of Hispanic population in Osceola
14 County, it could be very soon that Hispanics would
15 be able to elect a candidate of their choice. So
16 that was the justification behind that jutting into
17 east of District 5.

18 The evidence also showed that the Legislature
19 designed Districts 13 and 14 to avoid diminishing
20 the ability of black and Hispanic voters in that
21 district to elect the candidates of their choice.
22 The evidence showed that, although neither
23 African-Americans nor Hispanics had a majority in
24 that district, together they did have the majority
25 and they seemed to vote together in elections. So

1 it was called a coalition district where two
2 minorities voted together to elect candidates of
3 their choice. And the only way we could keep that
4 together was to have District 14 go across Tampa
5 Bay into Pinellas County.

6 There was also evidence that the north/south
7 configuration of Districts 21 and 22 was logical,
8 producing the relatively compact districts that
9 divide no municipalities. And, in fact, many of
10 the districts others had proposed, including the
11 Plaintiffs in our case, had the same configuration
12 of Districts 21 and 22.

13 Districts 26 and 27 in south Florida,
14 Miami-Dade County and Monroe, were drawn carefully
15 to preserve the ability of Hispanics to elect
16 candidates of their choice. Those are majority
17 Hispanic districts, and the Legislature offered
18 expert testimony that alternative configurations
19 would jeopardize their ability to elect.

20 As far as District 15, the Legislature drew
21 that district to include both Bartow and Lakeland
22 in one district, which is certainly within the
23 discretion of the Legislature to do. And then, as
24 far as District 25, the Legislature retained the
25 boundary in Hendry County to ensure that all Hendry

1 County African-Americans who enjoyed an ability to
2 elect in the benchmark plan, continued to enjoy
3 ability to elect in District 20, which is adjacent
4 to District 25, and that's why you see District 20
5 shaped the way it is. So District 25's
6 configuration is really a product of District 20.

7 The Court issued its opinion in this case, its
8 final judgment on July 10th, and it found that
9 Districts 5 and 10 were drawn in contravention of
10 constitutional mandates of Article III, Section 20,
11 and that is from page 1 of the Final Judgment which
12 I believe is in your meeting packet. And it said
13 Districts 5 and 10 were drawn in contravention of
14 constitutional mandates of Article III, Section 20,
15 thus making the redistricting map unconstitutional
16 as drawn. However, despite this ruling, all other
17 claims were rejected. So the Court found no fault
18 with 25 or Florida's 27 Congressional districts.

19 In District 5 the Court found that the
20 Legislature's concerns about vote dilution under
21 the Voting Rights Act, quote, "is not compelling
22 without some showing that it was legally necessary
23 to create a majority/minority district." And what
24 quote, "event" here was that that district had
25 already elected African-Americans to Congress

1 without going to a majority/minority district, and,
2 therefore, the Legislature could not justify why it
3 needed to go to 50 percent.

4 The Court concluded that the district
5 unnecessarily subjugates Tier Two principles of
6 compactness and, therefore, the district must be
7 redrawn as well as any surrounding districts
8 affected by the change. So two things in that
9 sentence. We talked about compactness and we
10 talked about Two Tier principles.

11 The Florida Supreme Court has said that you
12 cannot subjugate Two Tier principles unless it is
13 required by Tier One. And the Court believed that
14 it was not drawn compact enough and it was not
15 justified in having that kind of configuration by
16 the minority voting protections.

17 The Court also found that District 10 -- and
18 here is District 10 again -- unnecessarily
19 subjugates Two Tier principles of compactness
20 because it contains -- it included an odd-shaped
21 appendage, and that is what we talked about, which
22 is that area between District 5 and District 9.

23 The Court stated that the Plaintiffs have
24 shown that the district could be drawn in a more
25 compact fashion avoiding this appendage. The

1 Plaintiffs adduced multiple iterations emanating
2 from the House redistricting suite which did not
3 contain this appendage and were otherwise more
4 compact.

5 As far as Districts 13 and 14, the Court found
6 that the Plaintiffs failed to prove any Tier Two
7 deviations in those districts. The Court found
8 that the Plaintiffs did not demonstrate that the
9 decision to include portions of Pinellas County in
10 District 14 was a result of partisan now intent to
11 benefit the Republican Party.

12 For Districts 21 and 22 the Court found that
13 Plaintiffs had not met their burden of showing
14 unnecessary deviation from Tier Two requirements,
15 given the various trade-offs to draw compact
16 districts in the region as a whole. The Court
17 noted that an east/west configuration of the
18 districts may violate Tier One requirements for
19 minority protections in District 20.

20 For Districts 25, 26 and 27, the Court found
21 that alternative plans could have a regressive
22 affect on the Hispanic majority districts in south
23 Florida, and that any Two Tier differences between
24 the enacted plan and the Plaintiffs' alternatives
25 were *de minimus*. Because the Plaintiffs abandoned

1 their challenge to District 15 during the trial,
2 the Court did not address that district in its
3 opinion.

4 So that was the Final Judgment on July 10.
5 That judgment did not address at all what happens
6 next. All it said was the districts would have to
7 be redrawn. So the legislative parties filed a
8 motion to amend or alter the judgment about a week
9 later in which it asked the Judge to rule that it
10 is too late for 2014, to do anything about these
11 maps because the election process has already begun
12 for 2014, and that the 2014 election should proceed
13 under the 2012 map.

14 The Court held a hearing on that issue and
15 last Friday, on August 1st, the Court issued the
16 following order. And this is on page 5 and 6 of
17 that order which I believe is also in your packet.

18 First, the Court ordered the Legislature to
19 submit a remedial or revised map by noon on
20 August 15.

21 Let me backtrack a little bit on that subject.
22 When the Legislature filed its motion to alter or
23 amend the judgment, the Plaintiffs in the case then
24 submitted their own map to the Court and said to
25 the Court, you can't wait. Here is the map that we

1 propose. Adopt this map for the election.

2 The Legislature said it is the Legislature's
3 prerogative to draw a map, in the first instance,
4 and the Legislature should have a chance to redraw
5 these districts. You should not consider the
6 Plaintiffs' maps at least until we have a chance to
7 draw the maps. And so this order is a partial
8 reaction to that position giving us the
9 opportunity, albeit in a short amount of time, to
10 redraw the districts.

11 In the order the Court also ordered the
12 Secretary of State and the Supervisors of Elections
13 to present by noon on August 15th, which is next
14 Friday, a proposed special election schedule and
15 comments or suggestions regarding the conduct of
16 such an election assuming a revised map will be in
17 place no longer than August 21.

18 And I should emphasize that in this order, if
19 you haven't read it, the Court has not determined
20 yet what to do about the 2014 elections and which
21 maps should apply. The Court has expressed
22 skepticism that it can do anything about these
23 elections, but has asked the Secretary of State and
24 the Supervisors of Elections to provide some
25 alternatives to see if it is possible to have

1 elections in 2014 under a revised map, or whether
2 it is simply too late at this point, but the Court
3 has not made any decision on that issue yet. And,
4 if you look further down the order, any objections
5 to the remedial map or election schedule must be
6 submitted by noon on August 18th, and then the
7 Court will have a hearing on August 20th in order
8 to decide on any objections and decide on the map.

9 That is all I have. I believe Mr. Meros will
10 now address.

11 CHAIRMAN GALVANO: Yes, thank you, Justice.
12 And what we will do is go into you, Mr. Meros, and,
13 Mr. Bardos, I don't know if you have any
14 presentation, and then we will take questions from
15 the panel.

16 MR. MEROS: Thank you Chairs, members. George
17 Meros and Andy Bardos from Gray Robinson. We had
18 the honor and privilege to represent the Florida
19 House of Representatives in this matter. Excuse
20 me, I am a little hoarse, so hopefully my voice
21 will last.

22 I wanted to focus a little bit on minority
23 districts. CD 5, Congressional District 5 is at
24 the heart of this case, and I wanted to give the
25 committee some historical perspective on minority

1 districts, how they came about, why they are and
2 what this Legislature should be thinking about with
3 regard to a remedial map.

4 Most importantly, minority districts are not
5 drawn to favor or disfavor Democrats or
6 Republicans. They are drawn because,
7 unfortunately, racial discrimination in voting
8 persists in Florida and in other parts of the
9 country and that is manifested in this way.

10 African-Americans in many parts of Florida, in
11 many places elsewhere, vote cohesively for
12 African-American candidates. Unfortunately, in
13 portions of Florida and elsewhere, there is white
14 block voting that continues to persist where whites
15 block -- vote to block the African-American
16 candidate. That often occurs in a Democratic
17 primary where an African-American Democrat will
18 lose a primary to a white Democrat and not
19 ultimately be elected.

20 When you combine that with areas of Florida or
21 elsewhere where there is a history of racial
22 discrimination, where that history is a part of
23 many of the socioeconomic and other challenges that
24 the community might face, Federal law and Florida
25 law, and, most specifically, Amendment VI says that

1 there must be an opportunity to have districts
2 where the African-American vote actually will count
3 and will not be diluted or diminished.

4 That -- I think most fundamentally the
5 committee needs to understand that in 2010, when
6 the voters passed Amendment VI, they said to this
7 Legislature that is the primary goal, the primary
8 Tier One admonition to this Legislature, and that
9 is the rights of African-Americans and other
10 minorities to have their vote count, will not be
11 diluted and will not be diminished. So that is
12 what -- that is a fundamental part of what the
13 Legislature has to do in coming up with a legal
14 map.

15 It is also important to understand that,
16 again, this is not a matter of historical artifact,
17 these things continue to exist. And there was some
18 very compelling testimony at trial from witnesses
19 from Marion County, from Alachua County, from
20 Orange County about the continuing problem with
21 white block voting and racial discrimination.

22 Evelyn Fox from Alachua, a representative from
23 the NAACP, testified that no African-American had
24 ever been elected county-wide in Alachua County.
25 African-Americans had tried to get elected to

1 Sheriff a number of times, had not been elected.
2 Whitfield Jenkins, a champion of African-American
3 rights and NAACP President for many years from
4 Marion County, testified that no African-American
5 has ever been elected to the County Commission
6 since reconstruction. Since reconstruction in that
7 area only three African-Americans have ever been
8 elected to the City Commission. Those are areas
9 encompassed within a minority district. That is
10 the sort of testimony, the sorts of reality that
11 continues to exist not only in Florida, but
12 elsewhere. That is why we have to be very careful
13 about the Tier One requirements.

14 Now, let me go to CD 5 specifically and the
15 history of CD 5, and unfortunately I am old enough
16 to be able to tell you what happened because I was
17 there in the litigation from 1990. And in 1990, we
18 had a situation where in Florida there had not been
19 an African-American Congressperson since
20 reconstruction.

21 What happened there and elsewhere is that
22 districts were drawn in all of the areas with a
23 minority population of from 10, 15, 20, 30 percent
24 that elected a white Democrat. The NAACP, the
25 Lawyers Committee for Civil Rights, and others said

1 enough is enough and brought suit in Federal court
2 to compel the drawing of a district that would
3 elect an African-American candidate.

4 A three-judge Federal court in 1990 did just
5 that. It drew the original CD 5. That CD 5 you
6 will see is certainly not a model of compactness,
7 and if -- Jeff, if you can, and I believe that's
8 number one, yes. And you will see there in 1992
9 that that district goes from Orange to Duval and
10 then around like a horseshoe down to Marion County,
11 clearly not a model of compactness, but here is why
12 that district looked that way: Without combining
13 these minority communities the white block voting
14 was sufficient to never permit African-Americans to
15 be elected.

16 Now, in 1996, after decisions came down from
17 the U.S. Supreme Court saying that districts cannot
18 be drawn solely or predominantly on account of race
19 under the Equal Protection Clause, there was a
20 challenge to that district as drawn in the
21 horseshoe. The Federal Court found that it
22 violated equal protection and a Federal District
23 Court drew the district that you see before you as
24 a remedy for that, as a remedy to challenge the
25 sort of contentions that you hear now. So, in 1996

1 that district was drawn.

2 Now, notably that district was drawn in that
3 fashion by a Florida Legislature as a remedy for
4 the Federal Court that was a bipartisan
5 Legislature. The House had a Republican majority.
6 The Senate had a Democratic majority, and all but
7 three House Representatives voted for that and 40
8 Senators voted for that.

9 And what you will see since then is similar
10 iterations from Duval to Orange County. If you go
11 to 2002, you see what Justice Cantero said is the
12 benchmark plan that goes from Duval over to Alachua
13 and Orange. And notably in 2000, again, I had the
14 honor to represent the House of Representatives.
15 At that time, we were sued by Democratic interests
16 alleging that that district did not have enough
17 African-American population. It was approximately
18 47 percent, I could be wrong, but we were sued for
19 that and we had to defend against that suit. We
20 were successful in defending that suit, but,
21 nonetheless, we were sued. And then in 2012, the
22 enacted map looks like this.

23 Now, one immediately might wonder why combine
24 those communities. Well, what you will see is you
25 are combining African-American communities in

1 Duval, Marion, Alachua, Putnam Counties and Orange
2 Counties for historical reasons that are not by
3 accident and not by simply grabbing population.
4 Dr. Robert Cassanello, a specialist in
5 African-American history from the University of
6 Central Florida, testified in this case.

7 And he testified -- and this is his area of
8 research -- about the historical migration patterns
9 of African-Americans in the early 20th century that
10 were -- that went along railroad lines and river
11 lines because of discrimination in employment and
12 discrimination in zoning matters, and that one will
13 see in the development of this part of Florida in
14 that time that the railroad lines from Duval County
15 to Orange were exactly consistent with the
16 migration of the population, that river routes
17 consistently were similar as well to Alachua.

18 And so it was -- these were communities that
19 were -- by virtue of the circumstances in which
20 they found themselves, were forced into areas that
21 were not necessarily geographically compact. And
22 that is one of the standards and analysis that you
23 have to do when it comes to a minority area, and
24 that is: Are there similar interests and shared
25 concerns among the African-American population, and

1 if there is, and if there are, then compactness is
2 not a matter of aesthetics or geographic
3 compactness. Compactness is a matter of whether
4 the communities share concerns and common
5 interests, and, if so, one can be compelled, at
6 risk of Federal lawsuit or State lawsuit, to divide
7 that community.

8 So that is basically the history of CD 5 and
9 the history as to why it is drawn in the
10 north/south configuration and why it is drawn in a
11 way that is not necessarily aesthetically pleasing.

12 Now, going to the Tier Two standards that this
13 Legislature must deal with in the next few days and
14 that is I want to focus on the issue of
15 diminishment. Diminishment -- the law says that
16 one shall not diminish the opportunity of
17 African-Americans or other minorities to elect
18 their candidates of choice. What that means is the
19 following: It is an analogue to Section V of the
20 Federal Voting Rights Act, and what it means in
21 essence is you take the ability of a minority group
22 in the predecessor map, the 2002 map, the
23 benchmark, and you assess what opportunity did that
24 population have to elect a candidate of choice.
25 You then impose the 2010 population into that same

1 area, and then you look at the district that is
2 being proposed, and you have to assess whether the
3 population in that area is more, less or just as
4 able to elect a candidate of choice. And, if it is
5 less able to elect a candidate of choice, that is
6 diminishment.

7 That is a remarkably strict standard which the
8 people of Florida imposed on this Legislature.
9 What it means is not necessarily, if you have
10 100 -- exactly 100 minorities in a hypothetical
11 district, you cannot take it to 99
12 African-Americans. But what it means is, if there
13 is some lessening of the ability to elect, then
14 that population cannot backslide. It cannot go
15 backwards.

16 Now, others who want to dismantle minority
17 districts would say that it is only diminishment if
18 you take a district from being 100-percent likely
19 to elect an African-American candidate and you take
20 that to a tossup district, a 50/50 district, then
21 that is not diminishment. It is only if you make
22 it less likely than before that it is a
23 diminishment. That is plainly, in my view as
24 counsel and my counsel to you, to be contrary to
25 what the Florida Supreme Court said, what the

1 language of diminishment is, what the supporters of
2 Amendment VI told this Legislature in a combined
3 session.

4 So one has to remember that in areas of
5 significant minority population if you draw
6 districts and makes it less likely to elect, that
7 violates the State law that compels us to preserve.

8 Now, there are, there have been assertions and
9 there may well be in this session about dismantling
10 that district, taking Alachua County out, taking
11 Marion County out, taking parts of Putnam County
12 out and having an east/west configuration of a
13 district that would run from Duval County to
14 Chattahoochee.

15 I would counsel this committee, these
16 committees, Senators and Representatives, to reject
17 that notion because it is my considered opinion
18 that that violates not only the first tier of
19 Amendment VI, but the Tier Two compactness
20 requirements. And the map you have in front of you
21 there is a map that has been filed in court as a
22 proposed remedy by the Plaintiffs. And, as you can
23 see, that goes from -- well, you can't see it, but
24 I will tell you that it goes from Duval County all
25 the way to Chattahoochee, Florida, a distance of

1 206 miles.

2 Now, the Legislature has been criticized for
3 creating a district of CD 5 of 140 some miles.
4 That's 206 with a remarkable perimeter.

5 Now, first, looking at the Tier One issues,
6 the question is, does that diminish the opportunity
7 of the minority population to elect a candidate of
8 choice? The first thing you have to do there is to
9 assess that against the 2002 benchmark, and when
10 you do that what you see is that, along all
11 measures of political performance and election
12 performance, that district is less likely to elect
13 a candidate of choice than the benchmark 2002
14 district.

15 If I can find my chart there and ask you to go
16 to that -- well, I have a highlight here. Not in
17 your packet but available to you as a one page of
18 diminishment that we have available, but I was just
19 going to provide you with a highlight of that if I
20 can flop around here and find it. Yes. So it is
21 10, 11, 12.

22 CHAIRMAN GALVANO: Mr. Meros, I believe we all
23 have a handout.

24 MR. MEROS: Okay. You have the handout as
25 well. These are simply excerpts from the handout.

1 So the handout gives you the full picture. These
2 are simply excerpts.

3 And what you will see with regard to black
4 voting age population in the benchmark district is
5 49.9 percent in the benchmark and a reduction in an
6 east/west district of almost five percent.

7 Hispanic voting age population a reduction of four
8 and a half percent. And, very notably here, a
9 white voting age population in the east/west CD
10 that is 8.6 percent higher than in the benchmark
11 district.

12 Now, in my view looking at this alone, there
13 is no question that it makes it less likely for an
14 African-American candidate to win in an east/west
15 configuration than in the benchmark. And if you go
16 to the next slide, which is African-American voter
17 turnout, you will see that in the 2012 general
18 election, in the east/west configuration 47, it was
19 only 47 -- the black population was only 47.6
20 percent of the turnout, a 4.2 percent difference,
21 and then look down at the 2010 Democratic Primary,
22 a 7.9 percent difference, again, clearly weakening,
23 lessening the ability of the African-American
24 population.

25 If you go to election results, you will see

1 the benchmark and Kendrick Meek, Marco Rubio and
2 Charlie Crist, and there you will see that in
3 benchmark CD 3, Kendrick Meek had a margin of
4 victory of 16.2 percent, in the east/west CD 5 a
5 margin of victory of 4.5 percent.

6 If you look at the election results with
7 Kendrick Meek, he received 48.9 percent in the
8 benchmark and only 40.5 percent in the east/west
9 configuration. So all of those are absolute red
10 flags.

11 Now, the last -- and we have been up here a
12 long time and I will try to rush through this. But
13 I want to go back to the Tier Two problems with an
14 east/west configuration.

15 Compactness is fundamentally a visual matter
16 first, and you will see here notably -- you talk
17 about appendages, you talk about irregular lines,
18 this to me looks like a surf board that was
19 attacked by jaws in any number of different places
20 and that is the sort of thing, when you see that,
21 you have to say why. Is it justified? Is it
22 justified under Tier One? No, it is not justified
23 under Tier One because it is a diminishment. Its
24 end-to-end length of 206 miles is extraordinary.
25 And let's reconfigure that to show just how far

1 that is. That is the same district that goes from
2 Jacksonville to Sebring.

3 The next configuration goes from Miami to
4 Dunedin, and the next, which is my favorite, goes
5 from Naples to Havana. One is hard pressed to say
6 that that is a reasonably compact district that
7 serves as a reasonable alternative to a district
8 that was created by a Federal court in 1992 and
9 1996.

10 And, lastly, when one does an east/west
11 configuration like that, the impact it has on the
12 surrounding districts is dramatic. And you see
13 here, if there is an east/west district, you see
14 what District 2 would look like. End to end
15 District 2 here is 241 miles, now 100 miles longer
16 than the Legislature's CD 5, and it has a perimeter
17 of 1,010 miles. If one were to open up that
18 perimeter and have it as string, that string would
19 run from Tallahassee to Toronto, and there is no
20 reason to do that because in the other iterations
21 Districts 1, 2 and 3 are exceedingly compact.
22 People don't have to drive 241 miles to their
23 Congressperson, and the Congressperson doesn't have
24 to drive 241 miles to their constituents. These
25 are among the issues that I would counsel in terms

1 of minority districts and have them comply with the
2 Amendment VI requirements.

3 CHAIRMAN GALVANO: Thank you, Mr. Meros.

4 Okay. Members, we are going to go into
5 questions from any of the presenters today.

6 Before we do that, I would remind both
7 presenters and the panel that we do have a pending
8 lawsuit. So there may be areas that involve
9 strategic decisions or privilege or other
10 protections. So feel free to raise that with
11 counsel if that is the case and we will try to
12 watch out from the dais.

13 So, with that, Leader Smith, you are
14 recognized for a question or a comment.

15 LEADER SMITH: A quick question. I guess it
16 keeps coming up and no one has really addressed it.

17 And especially I would like to hear from
18 Senate counsel, former justice, if the Court's
19 finding that these districts, say CD 5 and 10 --
20 would you characterize the Court's finding that
21 these districts are unconstitutional? Is that how
22 you would --

23 JUSTICE CANTERO: As they were drawn, yes.

24 LEADER SMITH: So now, going back to the
25 timeline of elections, how can we have citizens

1 vote in an unconstitutional -- for an
2 unconstitutional drawn seat? How do we propose to
3 deal with the timeline if, in fact, it is the
4 finding of the courts that they're
5 unconstitutional?

6 JUSTICE CANTERO: There are many cases that
7 have held that elections can proceed under
8 unconstitutional districts where insufficient time
9 remains to redraw the districts before the upcoming
10 election. And we had testimony at the last hearing
11 before Judge Lewis that this 2014 election has
12 started already, that overseas ballots have been
13 sent and returned. People have actually voted in
14 the primary elections in this state already, and
15 courts have held that, when such is the case, it is
16 appropriate because there is no other alternative
17 to hold the upcoming election under the old map.

18 CHAIRMAN GALVANO: You are recognized.

19 LEADER SMITH: You gave a good analysis of the
20 Court's finding and how the Court came to that.

21 What about some of the other findings because,
22 as we move forward, I am a little concerned that
23 some of the other findings that you didn't discuss.
24 That were findings that there were collusions and
25 others?

1 Were you counsel for the Senate during this
2 time, during the time that we drew the last maps?

3 JUSTICE CANTERO: No, sir, I came in -- when
4 the Florida Supreme Court invalidated the Senate
5 map in March of 2012, I was hired just after that.

6 LEADER SMITH: Could I ask then, Mr. Meros,
7 were you counsel during this time?

8 MR. MEROS: Was I counsel for the House?

9 LEADER SMITH: For the House.

10 JUSTICE MEROS: Absolutely, yes. So I will be
11 happy to answer any questions you have.

12 LEADER SMITH: Were there in fact other --
13 some of these findings of facts -- and I am not
14 saying this just to be sensational, but I am saying
15 this, as we move forward, that I'm -- you know, I
16 understand the process as we move forward on.

17 What is your take on some of the findings of
18 fact that some of these meetings were held and we
19 were getting maps secondary to strategists to
20 getting maps?

21 MR. MEROS: Let me first say that the Judge
22 made no findings that House or Senate leadership,
23 House or Senate members or staff received specific
24 information and acted on that information from
25 outside sources.

1 In fact, the Court found and credited the
2 credibility of all of the map drawers and lauded
3 Senate and House leadership from -- by their
4 ability to keep them away from outside influences.
5 There is no question that it came out and,
6 unbeknownst to all of us, that draft maps were
7 being sent by a member in the House Redistricting
8 Suite to a political consultant.

9 He testified that he did so because political
10 consultants make their living on trying to find out
11 what is going to happen, but, nonetheless, it was
12 absolutely the wrong thing to do. He admits it.
13 No issue about that. The political consultants did
14 share maps, share evaluations, obviously tried to
15 get into the process, but I would hasten to add
16 there is no finding that the Court said that one
17 person, one legislator or one staff member or one
18 lawyer ever did anything at the behest of a
19 political consultant.

20 What he found was, I choose to infer that
21 because I see the shape of the district, that there
22 was an improper intent in drawing it that way
23 because there was not a sufficient justification
24 under Tier Two. Was the Judge happy with the
25 political emaciations going on by the consultants?

1 No. Were we happy with it? No.

2 SENATOR GIBSON: Thank you, Mr. Chair. And
3 this is for Justice Cantero. Thank you for your
4 very good explanation of the ruling on which I have
5 a question.

6 In your explanation and in the Order, I guess,
7 where it says, "I find that Plaintiffs have proved
8 that District 5 unnecessarily subjugates Tier Two
9 principles of compactness," and when -- my question
10 is in terms of this Order for the benefit of
11 proceeding on a map, is the Judge in your opinion
12 saying that the subjugation of the Tier Two
13 principles of compactness deals more with
14 performance than it does with any of the shape
15 scores that you mentioned, because I don't -- there
16 is no Reock score mentioned in here and there's
17 no -- I forget the name of the other one. So is
18 the compactness that is referred to in here based
19 solely on the performance figures that precede that
20 particular paragraph?

21 CHAIRMAN GALVANO: Justice.

22 JUSTICE CANTERO: Thank you. Senator Gibson,
23 I believe that the Order mentions, but if it
24 doesn't mention, the evidence showed that District
25 5 had a Reock score of .09, and I think the Judge

1 based his decision more than anything on the fact
2 that District 5 jutted into Seminole County. He
3 compared the Senate version or the enacted version
4 of the plan which jutted into Seminole County with
5 the House's 9043 version which did not have that
6 extension into Seminole County and, because of the
7 lack of extension, the black voting age population
8 was reduced from 49.9 percent in the benchmark plan
9 to 48.03 percent in 9043. But the Judge noted that
10 the House had conducted a functional analysis of
11 that district and that it would still perform for
12 minorities at 48.03 percent. So that is why he
13 decided that it was not necessary to go into
14 Seminole County in order to protect minority voting
15 rights, therefore, that going into Seminole County
16 was unjustified.

17 CHAIRMAN GALVANO: Follow up, you are
18 recognized.

19 SENATOR GIBSON: Thank you, Mr. Chair. And in
20 all of that and in his order then, there is no
21 mention that I see that would require us to propose
22 a plan that goes all over the state essentially
23 because the compactness is pretty limited.

24 JUSTICE CANTERO: The Order does not suggest
25 an alternative. In fact, in the August 1 Order,

1 the Judge agreed with the Legislature that it
2 wasn't the prerogative of the Court to give
3 direction necessarily about how to redraw the
4 districts.

5 His only authority was to determine whether
6 the districts as drawn were constitutional or not.
7 The judgment also does not ever indicate that a
8 minority district going from Jacksonville to
9 Orlando would be unconstitutional and that a
10 minority district going from Jacksonville west
11 towards Gadsden County would be constitutional or
12 would be necessary to remedy any constitutional
13 defects in the plan.

14 CHAIRMAN GALVANO: Leader Smith, a quick
15 comment.

16 LEADER SMITH: Mr. Justice, I guess it would
17 be a short turn around, but at least by Monday or
18 Tuesday -- by Monday could you get me some of those
19 cases that you mentioned earlier that the courts
20 have allowed voting in unconstitutional
21 circumstances?

22 JUSTICE CANTERO: Yes, Your Honor. If you
23 would let me know where you would like me to send
24 it, I could do it by today.

25 CHAIRMAN GALVANO: Justice, we will facilitate

1 that. We will make sure staff gets you what you
2 need.

3 Are there any questions? Representative
4 Rodriguez, you are recognized.

5 REPRESENTATIVE RODRIGUEZ: I guess as a House
6 member, I guess it could be from either Senate or
7 House counsel, but as a House member, I will direct
8 it to House counsel.

9 And this is -- for clarification for us, we
10 are here in special session to basically fix what
11 the Court has said about the District 5 and 10.
12 And my question relates specifically to how the
13 Tier One standard is applied. And, in listening to
14 your presentations of how Section 20 and the Voting
15 Rights Act combine with respect to minorities, I
16 got the sense that -- I think it was Senate counsel
17 who mentioned majority/minority districts a few
18 times. I know it was in reference to the Voting
19 Rights Act, which is extremely complicated
20 obviously now as to how it has been changed or
21 interpreted by the Executive, by the court system
22 and by the Congress.

23 And my understanding is that many of -- you
24 know, much of the jurisprudence talks about
25 coalition districts, opportunity districts,

1 minority influence in terms of how districts are
2 evaluated under the Voting Rights Act, and, of
3 course, this is a case of first impression in terms
4 of Section 20, but if you could give us clarity,
5 you know, as simple and straightforward as possible
6 in terms of how we should apply the Tier One
7 standard, both, you know, obviously incorporating
8 the requirement that we comply with Federal law.

9 MR. MEROS: Sure.

10 REPRESENTATIVE RODRIGUEZ: And just to be
11 clear, because, you know, again, we're going to --
12 you know, if there is a map that comes before our
13 respective committees, we are going to need to
14 apply Tier One in deciding on that map. And, based
15 on your presentations, it is not 100 percent clear
16 to me exactly what the standard is in terms of
17 retrogression, dilution or whatever is new under
18 Section 20 with respect to how we should decide
19 that.

20 CHAIRMAN GALVANO: You are recognized.

21 MR. MEROS: Sure, that's a daunting task, and
22 so I won't to spend 30 minutes on it, but let me
23 give you outline.

24 First of all, I would suggest that you look at
25 that portion of the Florida Supreme Court decision

1 from May 9 of 2002, which was on the State House
2 and Senate plans. And the Court lays out and
3 authoritatively construes Amendment V and VI in a
4 substantial way in a number of these things, and
5 comes up with some very direct definitions or
6 direct instruction.

7 But going to your question with regard to the
8 Tier One minority requirements, the first portion
9 of that language is effectively Section 2 of the
10 Federal Voting Rights Act which is a vote dilution
11 standard. And a vote dilution standard, in as
12 simple terms as I can make it without it being too
13 long, is that, if you have a minority population
14 that is sufficiently large and geographically
15 compact to constitute an African-American or
16 minority population of at least 50 percent, and
17 there is racially polarized voting and there is
18 white block voting and there are some other
19 considerations, then Section 2 would say that the
20 failure to do so is a violation of the rights of a
21 member of that population whose vote has been
22 diluted.

23 Now, let me give you an example of how that
24 might apply specifically in this instance. You
25 will recall that there was testimony from Justice

1 Cantero about the Seminole County -- the incursion
2 of CD 5 in Seminole County in taking
3 African-American population out of Sanford into CD
4 5 as it has been.

5 In the negotiations -- in the ultimate
6 negotiations, the House had drawn a Congressional
7 District 5 of around 48 and a half percent. The
8 Senate had drawn over 50 percent. Ultimately the
9 parties came together at doing it at over
10 50 percent. Because it is at least arguable and
11 one cannot say whether it's -- who would win on
12 either side, but it is at least arguable that,
13 because of the *Bartman v. Strickland* case which
14 said, if it's less than 50 percent, there are no
15 Section 2 rights, that it is at least arguable that
16 one could say that that population has to remain in
17 a 50 percent district or they could sue under
18 Section 2 for failure to have a district of
19 50 percent. And so the House said that is a
20 reasonable argument. We thought that we would do
21 it this way. You thought to do it this way.
22 Either side has a reasonable argument, but we are
23 happy to err on the side of avoiding that sort of
24 litigation, but that would be an example.

25 Diminishment and retrogression is, of course,

1 different, as I said, but the Supreme Court has
2 said that it is the standard -- it is effectively
3 the Section 5 standard, importantly, as explained
4 in the Congressional authorization of the 2006
5 Congressional authorization Voting Rights Act.

6 And in that the Court, the Supreme Court
7 expressly said that the diminishment standard is
8 whether or not the minority community is less able,
9 just as able, or not as able or more able to elect
10 a candidate of choice.

11 So it is a sliding scale. It is not as some
12 people say a dichotomous value. The Supreme Court
13 has made that explicit. So that is the
14 diminishment standard and those are two very
15 different standards.

16 Now the one thing I would add with regard to
17 that is the intent, the prohibition against intent
18 to favor or disfavor clearly does not apply when
19 one is required by the racial protections to --
20 under Tier One to protect a district, whether it is
21 a majority/minority district or it is a
22 historically performing less than 50 percent
23 district.

24 In other words, you have to look at minority
25 performance in trying to assure in drawing a

1 district that the African-American will have an
2 opportunity to elect a candidate of choice. In a
3 non-racial area, in an area with a small number of
4 minorities, if you were to do that and to do an
5 analysis that says, okay, how can I make sure that
6 this Senator is elected, that would be a violation
7 of the intent standard. With regard to minority
8 protections, that is not an improper intent to
9 favor or disfavor.

10 CHAIRMAN GALVANO: Follow up, you are
11 recognized.

12 REPRESENTATIVE RODRIGUEZ: Thank you, Mr.
13 Chair, in following up with respect to each of the
14 districts. So with respect to District 5, please
15 correct me if I am wrong, but is it your opinion
16 that as a matter of law in drawing District 5, it
17 has to be at least 50 percent minority voting age
18 population?

19 MR. MEROS: It is a debatable point. That's
20 exactly what happened when the House had 48 and a
21 half and the Senate had 50. You recall in that
22 2009, *Bartman v. Strickland* came out and said that
23 Section 2 only protects populations if it's at
24 least 50 percent. So that is a bright-line rule as
25 of that time.

1 So then the question is, when you are drawing
2 a district and you have -- and, by the way,
3 everyone concedes in this litigation that there is
4 racially polarized voting in northeast Florida and
5 that there is white block voting. So that is
6 satisfied. Everyone concedes that there is a
7 history of racial discrimination in voting in that
8 area and other areas.

9 So then the question is, well, might the
10 circumstances support the other pre-conditions and
11 the other Senate factors and be a viable or winning
12 lawsuit. There is no way to tell until that
13 litigation occurs. So the answer is you don't know
14 until you are sued.

15 And what the Legislature tried to do was say,
16 let's take away the possibility of that suit by
17 taking it to 50 percent. And where we are now is
18 there will be a District 5 that is less than
19 50 percent and the Legislature will be potentially
20 subject to a Federal lawsuit because of that, and
21 no one knows.

22 CHAIRMAN GALVANO: You are recognized.

23 REPRESENTATIVE RODRIGUEZ: Thank you, Mr.
24 Chair. And with respect to, I guess it would be
25 District 10, in that case -- again, correct me if I

1 am wrong -- but it would be the diminishment
2 factor. And if you could talk through how we would
3 apply that diminishment standard in that case.

4 MR. MEROS: The diminishing standard would
5 apply to District 10 because District 10 does not
6 have a significant minority population to have the
7 ability to elect.

8 CHAIRMAN GALVANO: Yes, follow up question.

9 REPRESENTATIVE RODRIGUEZ: Thank you,
10 Mr. Chair. And the Judge said that in the opinion.
11 And is that -- and this is a follow up on something
12 that I believe you had mentioned in your
13 presentation which is that, in making the analysis
14 with respect to District 10, that you would use the
15 benchmark, but 2010 population numbers.

16 I guess what I am getting at is, with respect
17 to what the Judge was looking at was based on data
18 four years old or 14 years old? Does that make
19 sense?

20 CHAIRMAN GALVANO: Mr. Meros.

21 MR. MEROS: You were talking about a
22 diminishment standard which uses a benchmark, but
23 that doesn't apply to looking at District 10
24 because, whether it was 10 years ago or now, that
25 is not a district where there is anywhere near a

1 sufficient minority community to elect a candidate
2 of choice. So you only do that in areas where
3 minorities have had some chance.

4 What the Court was saying with regard to
5 District 10 is, okay, the House had a district that
6 was more compact than the Senate. In negotiations,
7 again, part of the negotiation was we have an
8 emerging Hispanic population in central Florida
9 that didn't exist before, and so what to do with
10 that population.

11 And, in a reasonably compact District 9, you
12 could take that district from 39 percent, which was
13 what the House did, to approximately 42 percent,
14 which is what the Senate suggested, and make that
15 district a -- pretty soon, a Hispanic performing
16 district.

17 Now when you do that and increase the Hispanic
18 population, there is a population of non-Hispanic,
19 non-black in the southern and eastern portion of
20 lower CD 5 that has to be placed somewhere, and
21 that's one of things things in redistricting, there
22 is trade-offs, you have to get to zero population,
23 zero plus one.

24 The best of not-so-good alternatives was
25 putting that appendage in District 10, but we

1 argued to the Judge that was that was precisely in
2 order to enable the Hispanic population to elect a
3 candidate of choice as soon as possible, and, in
4 addition, what the Legislature did remarkably well
5 in the end of the negotiations was, while these
6 changes were being made, staff was able to go back
7 and decrease city splits, decrease county splits,
8 and improve preservation of those entities by a
9 factor of, for about eight or 10 cities and
10 counties, better metrics than any other map had
11 ever had.

12 The Court said, well, that is laudable, but I
13 still think this is non-compact. Non-compactness
14 to me is a standard that is somewhat higher than
15 city or county splits, and because CD 9, the
16 Hispanic district is not yet at 50 percent and,
17 thus, not protected under the Voting Rights Act,
18 there wasn't a compulsion to do so. So I find that
19 you violate Tier Two standards in CD 10 by virtue
20 of this non-compact appendage.

21 CHAIRMAN GALVANO: Senator Montford, you are
22 recognized.

23 SENATOR MONTFORD: Thank you, Mr. Chair. If I
24 may go back to the Plaintiffs' east/west
25 proposal --

1 JUSTICE MEROS: Yes.

2 SENATOR MONTFORD: -- I appreciate your
3 analysis of that, but help me understand where that
4 fits in the process. Where are we in terms of that
5 particular proposal in the scheme, the whole
6 scheme?

7 JUSTICE MEROS: Well, I imagine -- well, first
8 of all, the Court has before it a request by the
9 Plaintiffs to have an east/west configuration
10 imposed on the Legislature. The Court has said the
11 Legislature has the right to draw the map, and so
12 now it is before the Legislature.

13 I would imagine that there will be a proposal
14 that has that east/west configuration before the
15 Legislature to draw, and so that's how I think it
16 will come up.

17 SENATOR MONTFORD: Thank you, Mr. Chair.

18 CHAIRMAN GALVANO: Senator Simmons, you are
19 recognized.

20 SENATOR SIMMONS: Good afternoon.

21 JUSTICE MEROS: Good afternoon.

22 SENATOR SIMMONS: Mr. Meros, obviously we have
23 to look at this from the perspective that there is
24 a court order and, whether we believe it is right
25 or wrong right now, that is the court order and

1 that is the set of parameters within which we are
2 dealing.

3 And so I am looking at -- at the Final
4 Judgment, and I am on page 25, if you want to
5 follow along.

6 JUSTICE MEROS: I think I might have memorized
7 it, but go ahead.

8 SENATOR SIMMONS: And I am in the last
9 paragraph of page 25, and this is the prelude to my
10 question to you.

11 It is talking about the fact -- and he spent a
12 lot of time talking about the fact that -- first,
13 that he had looked at the ability -- he had the
14 ability to judge the demeanor of the staff. That's
15 on page 22, and he found them to be frank,
16 straightforward and credible. There was no
17 infiltration.

18 And, as a matter of fact, I read this as a
19 case in which the conduct of political operatives
20 was, in fact, imputed to the Legislature, and he
21 says on page 25 at the last paragraph, "The reality
22 and the irony is that there would be absolutely
23 nothing wrong about the attendees at those meetings
24 submitting proposed maps or partial maps. The
25 difference is, if done in the open, then those

1 reviewing the submissions could take into account
2 the source in evaluating whether it was neutral or
3 whether it might tend to favor or disfavor a
4 political party or an incumbent. One of the
5 political consultants lamented that, if he had
6 submitted maps in his own name, he would probably
7 have come under attack, accused of trying to favor
8 his party or its incumbents. Well, of course, his
9 submission might be closely scrutinized in the same
10 way that a proposed map submitted by the Florida
11 Democratic Party might be taken with a grain of
12 salt. That's how it should be if one is concerned
13 about improper partisan intent influencing the
14 drawing of the map."

15 Then he goes on and he says --

16 CHAIRMAN GALVANO: Senator Simmons, is there a
17 question?

18 SENATOR SIMMONS: Okay. My question is, he
19 ends up talking about it and he ends up saying that
20 ultimately resolving that we have to know who and
21 what -- who is ultimately submitting a map. And
22 if, in fact, we don't inquire -- because if we turn
23 to page 27, that is basically what he says. "If
24 you choose, however, to accept and perhaps rely
25 upon publicly submitted maps, it seems to me that

1 you should have a way to address the possible, nay,
2 probable partisan intent of the drafters of at
3 least some of those maps. The Legislature's answer
4 was apparently to ignore it."

5 We cannot ignore who ultimately prepared and
6 is presenting the Plaintiffs' maps. If, in fact,
7 the Plaintiffs' maps -- if we don't get into who
8 does that, then we can't consider it according to
9 the way I read his, his ruling.

10 And so we must ask, number one, who actually
11 prepared Plaintiffs' map. Was it paid for by the
12 Democratic Party, and all matters relating to that.
13 Is there an answer to that so that we can then take
14 it with a grain of salt?

15 JUSTICE MEROS: Well, Senator, I think that
16 you well identify a dilemma because, on the one
17 hand, if you inquire and interrogate, then you are
18 going to discourage public participation. You will
19 also require staff to spend half of its time trying
20 to probe into the possible motivation of what could
21 be many, many people.

22 I think for present purposes, unfortunately
23 because of the way this is, that the Legislature
24 has to at least try to be cognizant of when maps
25 are submitted to this Legislature in this

1 legislative session. One has to be careful about
2 the motivations behind those submitting it,
3 unfortunately.

4 CHAIRMAN GALVANO: Can I come back to you
5 because Chair Corcoran wanted to make a comment?
6 Thank you, Senator.

7 CHAIRMAN CORCORAN: Thank you, Senator. I
8 just want to -- you know, Leader Smith had
9 mentioned it to me -- at our session when we
10 convened, I had a discussion with Leader Thurston
11 and some of my colleagues on the Democratic side,
12 and to Leader Smith's earlier comments, I mean,
13 clearly what I would like to say is that I think
14 that some of -- the genesis is that's what Justice
15 Lewis said, how do we, you know -- to my colleagues
16 that have mentioned, how do we -- how is this going
17 to be different? We heard it was going to be --
18 that wasn't going to be something that was at
19 issue. How is this going to be different?

20 I mean, I would just like to start by saying
21 that both Senator Galvano and myself sent out memos
22 to all of our colleagues and we made it clear,
23 which was not done in the past, that you will have
24 no conversations with congressional members, no
25 conversations with congressional members or staff.

1 You will have no conversations with political
2 consultants.

3 To the extent that those conversations at any
4 point in time take place in a partisan manner, you
5 will report it to us directly and disregard it
6 completely to our staff.

7 In addition to that, to your point, Senator
8 Simmons, we said, if you do submit a plan -- and we
9 gave a lengthy list -- we want to know specifically
10 the identity of every person in the drawing, the
11 reviewing, the directing and the approving of the
12 proposed plan, the criteria they used, the sources
13 of the data in the creation of the map and the data
14 other than what is in My District Builder, should
15 explain the nature of any functional analysis
16 performed and that the proposal satisfies all the
17 Constitutional criteria.

18 I say all of that in that, and speaking on
19 behalf of Senator Galvano, I think that what you
20 all have voiced is readily apparent, and to that
21 extent we clearly know it's -- we wouldn't even be
22 here if there wasn't something that
23 constitutionally was viewed as awry by a Circuit
24 Court Judge.

25 He was very deliberative, but we believe that

1 in this process we have enforced it thoroughly. We
2 also recognize that the likelihood all of us would
3 be deposed is probably pretty great, and my answer
4 to a deposition that may or may not occur in the
5 future or here in this room is we have had zero
6 conversations with political consultants, zero
7 conversations with Congressional members. We will
8 not have those conversations.

9 We will ask where you got your maps and what
10 the genesis were. I mean, we will put forth what
11 our genesis was and where we got our maps, how we
12 worked it out, and I think that this process will
13 be truly, hopefully something that can be
14 replicated in the future, but I just -- I think we
15 are going to get a lot of this, I think they are
16 legitimate and I had this conversation with Leader
17 Thurston, but I think, if you look at the memos
18 that we outlined and if you look at the direction
19 we have given to people who may or may not submit
20 maps, we are going to follow the call of the
21 session. We are going to follow the order of Judge
22 Lewis and we are going to do so under the confines
23 of the memo that we sent out that hopefully will
24 remove any aspect of the nature of your comments.

25 CHAIRMAN GALVANO: Thank you. Senator

1 Simmons, you are recognized.

2 SENATOR SIMMONS: And that, Mr. Chair, is one
3 of the reasons that I raise this question is the
4 dilemma that we are confronted with here. His
5 order says that we basically need to do that. The
6 order also condemns doing it, and that is the
7 reason I believe, as a person who is trying to see
8 if we can comply with the Judge's order, that it is
9 facially unconstitutional because the United States
10 Supreme Court, as is evidenced in the case of
11 *McIntyre vs. Ohio Elections Commission*, which is a
12 1995 case, ends up concluding, "Under our
13 Constitution, anonymous pamphleteering is not a
14 pernicious fraudulent practice, but in the
15 honorable tradition of advocacy and of dissent.
16 Anonymity is a shield from the tyranny of the
17 majority and, thus, exemplifies the purpose behind
18 the Bill of Rights and the First Amendment in
19 particular to protect unpopular individuals from
20 retaliation and their ideas from suppression at the
21 hand of an intolerant society."

22 The simple fact of it is, is that the conduct
23 of these Republican operatives, it was
24 Constitutional free speech, but we are being told
25 under this order that there is something wrong with

1 it when there was nothing wrong with it. We may
2 not like it. As a matter of fact, the U.S. Supreme
3 Court even discussed, and I will quote, "But
4 political speech by its nature will sometimes have
5 unpalatable consequences."

6 The fact of it is is that we are sitting here.
7 We are being told by the Judge not to consider or
8 being condemned for having considered some free
9 speech and having it imputed to us and then later
10 on being told that we need to go ahead and inquire
11 as to any maps that are submitted to us other than
12 the maps that are submitted by our own staff, I
13 guess, and, fortunately, in compliance with the
14 Judge's order, that's what we are doing. We are
15 having staff without any contact by anybody out in
16 the public to be able to do this, and that, of
17 course, violates the Florida Constitution which
18 says that people shall have the right to --
19 peaceably to assemble, to instruct their
20 representatives and to petition for redress of
21 grievances which, of course, means that we need to
22 be open and free -- and have free access to the
23 people. We are not the judiciary. We are the
24 Legislature.

25 I only point this question out is to ask the

1 question, is that I think, Mr. Meros, what we are
2 all doing is we are having staff be free -- just as
3 Chair Corcoran said, that we are going to be free
4 of any kind of influences from anybody in the
5 drafting of these maps, and that is what I heard
6 him say.

7 I know we are complying with the Judge's
8 order. I am just saying that in my mind I think
9 that the Judge's order is facially
10 unconstitutional.

11 CHAIRMAN GALVANO: Would you like to respond,
12 Mr. Meros?

13 MR. MEROS: I don't know what to say other
14 than it was a true or false question. Well said,
15 but I certainly have not assessed the
16 constitutionality of the Order.

17 CHAIRMAN GALVANO: Justice Cantero, do you
18 have a response?

19 JUSTICE CANTERO: I would like to further
20 respond to Senator Simmons' question regarding the
21 committee's consideration of the Plaintiffs'
22 proposal in court.

23 First, there is no such map that has been
24 presented to this committee for approval. So I
25 don't think that the committee needs to address

1 that at all at the moment. If and when such a
2 proposal is submitted, then you may consider what
3 the background of that map was and maybe question
4 the proposer about the origin of that map.

5 However, the House and Senate counsel felt an
6 obligation to bring to your attention that the
7 Plaintiffs have submitted this proposed remedy to
8 the Court after the judgment and had asked the
9 Court to adopt that remedy without even considering
10 what the Legislature would do.

11 I should point out that on July 29th, the
12 NAACP, which is also a party and intervened as a
13 defendant, meaning in defense of the districts that
14 the Legislature drew, filed in opposition to the
15 Plaintiffs' proposed remedy and specifically to any
16 configuration of the majority or of District 5 that
17 would go east/west from Jacksonville to Gadsden
18 County. And I can provide you with copies of that
19 submission, but I think that if you are interested
20 in why the NAACP objects, I think that is good
21 reading for you.

22 And I would just summarize that the NAACP,
23 which presented evidence at trial, pointed out that
24 black voters in the region that extends from
25 Jacksonville to Orlando are struggling with the

1 lack of affordable housing, segregated housing and
2 segregated schools, glaring disparities in the
3 criminal justice system, lack of city services and
4 urban renewal encroaching on affordable housing,
5 and significantly they face the persistent
6 inability to consistently elect black candidates in
7 local elections.

8 Then it goes on to say that Plaintiffs have
9 proffered no evidence that such a district is
10 necessary in an entirely different part of the
11 state. So we felt that we are obliged to present
12 that map to you, but that -- because it was
13 presented to the Court, but really there is nothing
14 for you to consider at the moment regarding that
15 configuration.

16 CHAIRMAN GALVANO: Representative Fullwood.

17 REPRESENTATIVE FULLWOOD: Thank you,
18 Mr. Chair. I have a question for either the Senate
19 or House counsel. As I struggle and maybe others
20 are with this sort of balancing act between this
21 issue of diminishment versus Amendments V and VI of
22 our Florida Constitution and trying to figure out
23 what trumps what, my question is essentially, if we
24 draw new districts that are more compact, the Judge
25 says, while these are more compact, however, they

1 may be in violation of the diminishment clause of
2 the Voting Rights Act. So we could be okay with
3 this Judge and find ourselves in the middle of a
4 Federal lawsuit is what I sort of got from what you
5 are saying, if you could clarify that.

6 MR. MEROS: Sure. And that is a great
7 question because there is a need to clarify.
8 Section 5 of the Voting Rights Act, with not the
9 Section 2, which is the vote dilution standard,
10 applies only in six counties in Florida, or it
11 applied in only six counties in Florida.

12 The U.S. Supreme Court found the formula for
13 determining who is subject to Section 5
14 requirements or not -- found that to be
15 unconstitutional, and so now at present Section 5
16 of the Federal Voting Rights Act does not apply
17 anywhere in Florida; however, what the voters did
18 in Amendment VI was to create a Section 5
19 diminishment standard statewide in all 67 counties.

20 Now, with regard to the question of how does
21 compactness interact with that, you have to look at
22 it and make an assessment at whether one could
23 slightly reduce the minority population in an area
24 without making it less likely that the
25 African-American candidate can win, and if one can

1 do that and make a district more compact or more
2 compliant with city and county splits, then one
3 should consider that and the Court can say that you
4 need to do that.

5 For instance, the House made a determination,
6 in its iterations of CD 5, to have a district of
7 approximately 48.5 percent, the benchmark CV 5 was
8 at 49.9 percent, and we reduced that to 48.5 while
9 improving the compactness and the other metrics,
10 but keeping it high enough to where we did not
11 believe there was a credible argument that it made
12 it less likely to elect a candidate of choice. So
13 there is interplay at times between Tier One and
14 Tier Two.

15 Mr. Chairman, if I may, I just want to correct
16 the record, because I am advised that I stated, I
17 think to Senator Smith, that there was a member of
18 the redistricting suite that was providing draft
19 maps to political operatives. That is incorrect.

20 It was a member of -- it is a staffperson in
21 the Speaker's Office that did that. It is
22 absolutely clear and the Judge found that the
23 redistricting suites were completely walled off and
24 did things the right way.

25 CHAIRMAN GALVANO: Okay. Representative

1 Fullwood for follow up?

2 Okay. Leader Thurston, you are recognized.

3 LEADER THURSTON: Thank you, Mr. Chairman.

4 Now I certainly want to thank you gentlemen for the
5 presentation and certainly I have a different
6 opinion of the Judge's order than Senator Simmons,
7 but I note the writings of the Judge here. He
8 talked about -- on page 1 when he talked about
9 associations and parties, he says they will become
10 quote "engines by which ambitious and unprincipled
11 men will enable -- will be enabled to subvert the
12 power of the people."

13 And I think that what is his concern was in
14 his ruling, but I want you to tell me what your
15 understanding is of his ruling about the erased
16 e-mails.

17 CHAIRMAN GALVANO: Justice Cantero, you are
18 recognized.

19 JUSTICE CANTERO: Thank you, Mr. Chair. I
20 will answer that question. The Judge did not focus
21 very much on the erased e-mails. It is on page 23.
22 There is only one paragraph on the erased e-mails,
23 and I am not sure if it was on this paragraph,
24 itself, or another where the Judge said that
25 legislators had erased their e-mails and, while

1 there was nothing wrong with that, they didn't
2 violate any rules, they didn't violate any laws, he
3 just wondered why they would do that.

4 And he said it made him a little suspicious,
5 but he did not say that there was anything legally
6 or morally wrong with regularly, in the ordinary
7 course of business, erasing e-mails. We have
8 asked -- in an abundance of caution and to make
9 sure there is no even appearance of impropriety and
10 that the Legislature cannot be criticized, we have
11 asked that you not erase e-mails from now on, but
12 the evidence at trial was simply that legislators
13 erased e-mails in the ordinary course of business
14 in 2012 just as anybody would erase e-mails. Some
15 e-mails were retained for archival purposes. Most
16 were not, but there was no actual finding that what
17 was done in 2012 was nefarious, illegal or wrong;
18 however, we want to avoid in the future even being
19 criticized for doing so.

20 LEADER THURSTON: Follow up, Mr. Chair?

21 CHAIRMAN GALVANO: You are recognized.

22 LEADER THURSTON: When you said "we have
23 asked," is there some rule that is in place now
24 that wasn't in place in 2010 that would prevent
25 that from happening?

1 JUSTICE CANTERO: I believe that there was a
2 letter or e-mail from the Chairs.

3 CHAIRMAN CORCORAN: Yes, that was a Chair's
4 recommendation. There has not been a modification
5 to the Senate rules and to my knowledge not to the
6 House rules.

7 LEADER THURSTON: Follow up, Mr. Chair?

8 CHAIRMAN GALVANO: Yes, you are recognized.

9 LEADER THURSTON: You made -- and I am not
10 sure which one, but someone said that you had ruled
11 out the possibility of the east/west district
12 because of the minority population and how it would
13 be affected, and you referenced the NAACP letter.

14 Several members from the Orlando community
15 have some questions about that. Are you saying
16 that the drop in the minority population would not
17 allow you to consider an east/west district?

18 JUSTICE CANTERO: Under the configuration of
19 the east/west district, the NAACP has shown that
20 in, in the 2010 election, which is a midterm
21 election without Barrack Obama on the ballot,
22 similar to what will be seen in 2014, white voters
23 constituted 52.68 percent of the electorate while
24 black voters only constituted 42 percent of the
25 electorate.

1 And, therefore, the NAACP was not confident,
2 in fact, very skeptical that a district that ran
3 east/west could elect a black candidate.

4 LEADER THURSTON: One last follow up.

5 CHAIRMAN GALVANO: You are recognized.

6 LEADER THURSTON: The correction was made that
7 the operative who was releasing the map was from
8 the Speaker's Office and not from the redistricting
9 office.

10 Was it ever determined in terms of the map
11 that was submitted and the college student's name
12 who actually submitted that map?

13 JUSTICE CANTERO: It was -- there was some
14 circumstantial evidence about who submitted it, but
15 there was no direct evidence. It was -- there was
16 evidence at trial that the Alex Pasolva map was
17 very similar to maps that had been drawn by some
18 political consultants, but there was never any
19 direct evidence of who actually submitted those
20 maps other than Alex Pasolva.

21 CHAIRMAN GALVANO: Leader Smith for a quick
22 follow up.

23 LEADER SMITH: The numbers you just quoted for
24 the east/west, were those primary or general
25 numbers? It was 52 white and 40 something black.

1 Was it primary or general numbers?

2 CHAIRMAN GALVANO: It doesn't specify. It is
3 on page 5 of the NAACP's opposition to Plaintiffs'
4 proposed remedy.

5 CHAIRMAN CORCORAN: Representative McGhee, you
6 are recognized.

7 REPRESENTATIVE MCGHEE: Thank you, Mr. Chair.

8 Sir, on page 22 of the Final Judgment, the
9 Court basically honed in on a -- more of a, in the
10 Court's word, and the question that the Court
11 placed before was about is whether or not the
12 leadership or the Legislature in general was either
13 duped by these operatives or joined in the plans,
14 and thus far we have been able to make a
15 determination that three individuals, Alex Kelly,
16 John Garcey and Jason Pasada acted in a way that
17 was very -- that shouldn't come in because of their
18 hard work and their way of making sure that nothing
19 came within this body that would have caused it to
20 be questioned, and so my hats off to them for the
21 great work. But if the Court has already ruled out
22 that those three were not part of this conspiracy,
23 the word that the Court used, then that leaves us
24 with the last parameter to deal with, is whether or
25 not they are were duped, the remaining parties were

1 duped by these political operatives.

2 My question to you is: If these political
3 operatives were in the process of duping or duped
4 some of the individuals who were responsible for
5 the maps, should those political operatives be held
6 responsible in a criminal -- in the criminal field
7 and/or in the civil field?

8 JUSTICE CANTERO: Representative, I am not
9 sure that I am the right person to expound on the
10 criminal law. All I know is that there has been no
11 finding of criminal activity on the part of the
12 political consultants, and, while the Judge
13 criticized them for filing maps without putting
14 their names on it, I don't think either the Judge
15 or even the Plaintiffs ever suggested that what
16 they were doing was illegal.

17 REPRESENTATIVE MCGHEE: Follow up?

18 CHAIRMAN GALVANO: Follow up.

19 REPRESENTATIVE MCGHEE: Thank you, Mr. Chair.

20 If someone can answer this question, who was
21 responsible for paying these political operatives
22 to be a part of this process?

23 CHAIRMAN GALVANO: What was her name, I don't
24 think that is a question for legal counsel, and,
25 members, if we are going to have questions on this,

1 I think it is important we have our lawyers here,
2 but I think it would also behoove us to use our
3 time wisely.

4 We are here to comply with the joint
5 proclamation, which in essence asked us to redraw
6 two districts, CD 5 and CD 10, and, in doing so, to
7 comply with the State Constitution, the Federal
8 Constitution and the concerns raised by the Circuit
9 Court. And, in order to do that, I thought it was
10 appropriate, as did Chair Corcoran, that we have
11 legal counsel here to give us guidance so that,
12 when we have that discussion, we are able to move
13 the ball forward and to create districts that will
14 comply and will be acceptable to the Circuit Court.

15 And so while I understand we have counsel here
16 and I will allow questions, I think we need to
17 remember what the task at hand is and perhaps be a
18 little more focused.

19 REPRESENTATIVE MCGHEE: Thank you, Mr. Chair.
20 Thank you, Mr. Chair. Then -- which brings my
21 question to this in addition to what the Chair was
22 speaking of: What parameters have our counsel's
23 comment brought forth or proposal that would
24 prevent such actions that we find inside of this
25 that lays in front of us that specifically talk

1 about conspiracies, shadows, political operatives
2 having access? What parameters are being placed
3 before us this day to ensure that something of this
4 nature would never happen again?

5 JUSTICE CANTERO: I believe the Chairs of the
6 committees have asked the members of the committees
7 and of the separate Houses not to have contact with
8 political consultants regarding this process, not
9 to have contact with Congress members throughout
10 this process, et cetera.

11 CHAIRMAN GALVANO: Thank you. And before I
12 recognize you, Senator Gibson, then I would also
13 add that the Order did not require us to do
14 anything other than -- at this point other than to
15 modify CD 5 and CD 10.

16 Senator Gibson you are recognized.

17 SENATOR GIBSON: Thank you, Mr. Chair. And to
18 that point I just want to revisit really quickly
19 the Reock score test. I believe, Justice, you said
20 District 5, as drawn today, has a Reock of .09.

21 JUSTICE CANTERO: Yes.

22 SENATOR GIBSON: So, in terms of the Judge's
23 order and the decisions we have to make in
24 complying with that order, we will be allowed to
25 use Reock scores. And is there a measurement of

1 those appendages, if you will, that would impact
2 the Reock score of either of the districts, well,
3 particularly District 5 in terms of compactness?
4 So how -- I am trying to phrase it so
5 understandable.

6 JUSTICE CANTERO: I think I know your question
7 and, if I answer and it doesn't answer your
8 question, please let me know.

9 The House's version of CD 5 did not contain
10 that incursion into Seminole County that was in
11 9043, and the Reock score for that map was .11. So
12 it was more compact than the enacted CD 5.

13 CHAIRMAN GALVANO: President Lee, you are
14 recognized.

15 PRESIDENT LEE: Thank you. Justice, I
16 appreciate you and Mr. Meros' presentation today.
17 Thank you, Mr. Chair. There are times when I feel
18 like I am at a real disadvantage up here not being
19 a lawyer, and then there are times I feel like it
20 actually helps me. I am not sure which this is
21 going to be.

22 I want to try to bottom-line this because I
23 was not involved in the drafting of the maps in
24 2012. I wasn't here, but I was involved quite a
25 bit in '02 when we had reapportionment, and I

1 appreciate the thoroughness of you going through
2 sort of the machinations of the process and what
3 binds us.

4 But I want to make sure that I understand just
5 kind of a couple of simple principles if I am right
6 or wrong about these things. Essentially at the
7 30,000-foot level there is a body of law,
8 jurisprudence, et cetera, that encourages, in fact,
9 even obligates us to consider discrimination,
10 voting discrimination that has taken place and to
11 give access to minorities to the ballot and enhance
12 their chances of winning, and that is one of the
13 reasons why we have some of these districts that
14 don't conform to what you might could call the more
15 commonplace geometric shapes that we know as
16 people. Right?

17 JUSTICE CANTERO: Yes.

18 PRESIDENT LEE: And so fortunately or
19 unfortunately due to outside influences, political
20 priorities of both parts and individuals, the --
21 well, divine intervention. So because of that
22 there are opportunities for people to engage in the
23 crafting of these districts for the purposes of
24 meeting the tests and the priorities of minority
25 representation to overachieve, to actually excel

1 too much, to concentrate too many minorities,
2 whether it be in -- say in this case CD 5 and/or CD
3 9 which essentially is a Hispanic access attempt
4 there, and we can actually overachieve in our
5 effort to accomplish those objectives at times and,
6 as a result of that, there can be allegations of
7 partisan intent. In other words, we packed
8 districts and exceeded the needs of the mandates
9 which gave rise to partisan opportunities outside
10 of those districts. Is that fair?

11 JUSTICE CANTERO: Yes.

12 PRESIDENT LEE: And so essentially what this
13 Judge seems to have concluded --

14 JUSTICE CANTERO: You are being a very good
15 lawyer right now by the way. Your
16 cross-examination is excellent. You're just
17 getting yes or no answers.

18 PRESIDENT LEE: Thank you very much. So it
19 seems to me that this Judge, if you scrape away all
20 of this and this Judge has concluded in his own
21 mind that in essence we didn't need to go as far as
22 we went to preserve the integrity of the minority
23 access, indeed the minority/majority district that
24 we created in CD 5, we didn't really need to go
25 that far in his mind. And in doing so we have

1 created some other anomalies, the appendages and
2 what-have-you. And he has encouraged -- not
3 encouraged -- he has asked this Legislature to come
4 in and fix that over-accomplishment essentially, I
5 mean, that is my terminology, and produce another
6 map for him through this special session process.
7 Is that fair?

8 JUSTICE CANTERO: Yes, that is correct.

9 PRESIDENT LEE: Thank you very much.

10 CHAIRMAN GALVANO: Senator Bradley, you are
11 recognized.

12 SENATOR BRADLEY: Thank you, Mr. Chairman and
13 Justice Cantero, thank you for your presentation
14 today, and Mr. Meros, as well, very, very thorough.

15 And my question concerns Mr. Meros' statement
16 earlier, and Justice, this will be a question for
17 you. I am just putting it in context.

18 It concerns his statement earlier that we need
19 to be concerned about diminishment or retrogression
20 because the Constitution demands that we be
21 concerned about that. And so, therefore, just
22 cutting to the chase, what is an appropriate BVAP
23 percentage -- I'm talking about CD 5 in particular.
24 What is an appropriate BVAP percentage in order to
25 remain compliant with Judge Lewis' concerns, and

1 also do our best, although there are no guarantees
2 in life, to avoid Federal court challenges?

3 JUSTICE CANTERO: Well, let me answer it this
4 way. The BVAP that's necessary to elect is not
5 necessarily a specific number as we have found out.
6 It is more of a range and it is what can you get to
7 so that you can make sure that the minorities have
8 the opportunity to elect a candidate of their
9 choice.

10 And it is really a predictive process, because
11 you are predicting in the future, will this amount
12 of black voting age population be able to elect
13 their candidate? Now you can predict the future by
14 looking at what has happened in the past.

15 Judge Lewis criticized the Legislature for
16 drawing a district that went to 50.06 black voting
17 age population. He did mention that the House, the
18 9043 version of District 5 had a BVAP of 48
19 percent, and that the House at that level had
20 conducted a functional analysis, which a functional
21 analysis simply means you analyzed political
22 science figures and determine whether at that level
23 of voting population can you actually in a given
24 election elect a candidate of your choice?

25 And so you look at primary election data,

1 general election data, voter turnout data, those
2 kinds of things. So you can predict in the real
3 world, does black voting age population at a
4 certain level actually translate to electing
5 somebody? And the House had conducted a functional
6 analysis at 48 percent and had determined that at
7 48 percent you could elect a candidate of their
8 choice and, therefore, I am not going to say that
9 the Judge blessed that, because he didn't go that
10 far, but he did say that the House was able to do
11 it and conducted a functional analysis at
12 48 percent. So I would think that 48 percent was a
13 good figure to try to get to.

14 CHAIRMAN GALVANO: Senator Bradley.

15 SENATOR BRADLEY: So if -- just -- again to
16 just cut to the chase. So if 48 percent were sort
17 of the low bar and then 50.6 as I understand it --

18 JUSTICE CANTERO: 50.06.

19 SENATOR BRADLEY: -- 50.06 is what the
20 existing map is and the existing map, of course,
21 contained an appendage that you found concerning
22 and, therefore, would like to see it go away, which
23 would reduce that to below, so it would be
24 somewhere between 48 and 50.6 basically.

25 JUSTICE CANTERO: Basically, yes.

1 CHAIRMAN GALVANO: And the east/west was 45?

2 JUSTICE CANTERO: The east/west was 45.

3 CHAIRMAN CORCORAN: Representative Berman, you
4 are recognized.

5 REPRESENTATIVE BERMAN: Thank you, Mr.
6 Speaker. I want to make sure that I understand. I
7 understand what the concept of diminishment means,
8 but we heard the term "retrogression" thrown around
9 a little bit, and I want to understand, are
10 diminishment and retrogression the same thing?

11 JUSTICE CANTERO: Basically.

12 REPRESENTATIVE BERMAN: Follow up?

13 CHAIRMAN CORCORAN: Yes.

14 REPRESENTATIVE BERMAN: Thank you, Mr. Chair.
15 Then I also would like to understand a little bit
16 more about where the diminishment concept is found
17 in law. I think Mr. Meros said it is analogous to
18 Section 5, but that there is a higher standard
19 imposed under Florida law, and where is the legal
20 basis for that higher standard that is imposed?

21 JUSTICE CANTERO: The legal basis for
22 diminishment is found in Section 5 of the Federal
23 Voting Rights Act. The Florida Constitutional
24 Amendment was taken directly from that language in
25 the Federal Voting Rights Act.

1 What Mr. Meros was talking about was recently
2 the U.S. Supreme Court invalidated Section 4 of the
3 Voting Rights Act and, by virtue of that, Section 5
4 is now up in the air, kind of laying there without
5 a foundation. So right now there is no Federal
6 law, but there is still that State law under the
7 Florida Constitution.

8 REPRESENTATIVE BERMAN: Thank you. So you are
9 saying it is under the Fair Districts Act?

10 JUSTICE CANTERO: Yes, correct. All of these
11 are State law, State Constitutional principles.
12 They did not assert any Federal issues in this
13 case.

14 REPRESENTATIVE BERMAN: Thank you.

15 CHAIRMAN GALVANO: Further questions? Are
16 there any questions?

17 Well, gentlemen, I appreciate your time today.
18 The information that you provided I am sure we
19 will be talking.

20 JUSTICE CANTERO: Thank you for the
21 opportunity, Mr. Chair.

22 CHAIRMAN GALVANO: Okay. Let's go into public
23 testimony. We have some cards here. Let me start
24 with Jessica Lowe-Minor, Executive Director, League
25 of Women Voters of Florida. Good afternoon and

1 welcome.

2 MS. LOWE-MINOR: Good afternoon, and thank you
3 so much, Mr. Chairman, members of the committee.
4 My name is Jessica Lowe-Minor, and I am here on
5 behalf of the League of Women Voters of Florida.

6 The issue of gerrymandering and fair
7 reapportionment have been a League priority for
8 over 75 years, since the organization first began
9 in Florida. And our members and supporters across
10 the state remain committed to ensuring that it is
11 the voters who choose their elected officials and
12 not the other way around.

13 In 2010, Floridians made their position on the
14 issue clear when they passed, by an overwhelming
15 margin, a constitutional amendment that established
16 new standards for Congressional redistricting and
17 banned partisan favoritism from the process. It is
18 critical that the Legislature follows the rule of
19 the people and adheres to both the letter and the
20 spirit of Florida's Constitution.

21 After waiting for so many years, voters are
22 looking forward to seeing the Legislature produce
23 maps that are fair, compact and are not created to
24 favor or disfavor political parties or incumbents.
25 Judge Terry Lewis' order provides a clear pathway

1 for this body to use moving forward with specific
2 guidelines as to how the districts must be drawn.

3 At the end of the day our democracy depends on
4 each and every voter having the same ability to
5 elect a representative of their choice. Political
6 gerrymandering robs voters of that chance, and we
7 are looking to you to ensure that the map be
8 produced is fair and that the process that you use
9 is transparent. Thank you.

10 CHAIRMAN GALVANO: Thank you. And next we
11 have Michael Ertel, Supervisor of Elections,
12 Seminole County, representing his office.

13 MR. ERTEL: Chair.

14 CHAIRMAN GALVANO: Good afternoon and welcome.

15 MR. ERTEL: Thank you very much, Chair,
16 Senators and Representatives.

17 I am only here to talk about the mechanics of
18 any potential special election that may take place
19 or the timelines or anything like that. I know
20 that the Judge had ordered that the Secretary of
21 State work with all of the affected Supervisors of
22 Elections to help with the timeline, but since
23 Seminole County has been mentioned today probably
24 more than any other day on the floor, when it
25 relates to maps, it's good that we are here to sort

1 of answer any questions as it relates to what may
2 occur timeline-wise.

3 I do know that the lobbyist for the Florida
4 State Association of Supervisors of Elections is
5 here as well. I am not a member of that
6 organization. So that's another reason why we are
7 here.

8 My hope is that any timelines that take place
9 help to increase voter trust. We're Florida. We
10 need to make sure that everything that we do
11 increases the trust in the process, and that we
12 want the elections, themselves, to be a success, so
13 hopefully the timelines of the elections help it to
14 be a success, give all the voters, every single
15 voter the opportunity to take part in the process
16 if it is a special election or if it is an election
17 that is run on a regular election cycle, like 2016.

18 Logistically what we will do as soon as the
19 new lines are established officially, is it will
20 take us a little while to redraw those lines within
21 every single county of the affected counties. Not
22 every county is going to be affected, but it will
23 take us a little while to redraw those lines.

24 So basically everything that we did over
25 months and months and months after the

1 redistricting of 2010 and going into 2011, or to
2 2011 going into 2012 will be truncated in a very
3 short period of time. We can do it. We are not in
4 the whining business. We are in the
5 getting-it-done business, but we want to make sure
6 that we can get it done and we have enough time to
7 get it done in a fashion that is a success. We
8 don't want to be doing everything so quickly that
9 we can't do it successfully.

10 CHAIRMAN GALVANO: What is that time frame?

11 MR. ERTEL: Well, we are all going to get
12 together with the Secretary of State. The affected
13 Supervisors of Elections -- I have seen the maps
14 that were released today and certainly Seminole
15 County is impacted by that.

16 And as I look at any potential timelines for
17 something taking place before the end of 2014, I
18 think we need to be very cognizant of our military
19 voters and the timelines that they have. I was
20 in -- eight years in the military myself. I was
21 overseas as a military voter, and when I got my
22 ballot in the mail as an overseas military voter,
23 it was better than a letter from home. It was not
24 a letter from home. It was an affirmation that we
25 were being invited to take part in the process that

1 we were overseas to defend. And that's something --
2 sorry, I am cracking here, because it is very
3 important to all of us.

4 I don't know how many of you all were ever
5 overseas military, but you feel so patriotic and
6 part of our republic and the democracy that helps
7 that republic take place. So we want to make sure
8 that, as elections officials, and leaders of the
9 state, everything we do not only says thank you to
10 our military voters, but says we invite you to take
11 part.

12 CHAIRMAN GALVANO: Leader Smith, did you have
13 a comment?

14 LEADER SMITH: Yes, a quick question. How
15 many precincts are in Seminole County?

16 MR. ERTEL: We have 80 precincts.

17 CHAIRMAN GALVANO: Representative McBurney.

18 REPRESENTATIVE MCBURNEY: Thank you, Mr.
19 Chairman. Have you done any cost estimates to the
20 state of Florida for conducting a special election,
21 either your particular county or statewide or both?

22 MR. ERTEL: For our county, we have done them,
23 and we have sort of done them based upon
24 back-of-napkin judgments. If it is a countywide
25 election, which we are always prepared for, it will

1 cost our county -- with 80 precincts 262,000
2 voters, it will cost us about \$550,000.

3 That includes everything for just the conduct
4 of the election, itself: Getting voters new cards,
5 redoing and redrawing all the precinct lines,
6 setting everything in place to make it happen and
7 make it a success. We can't wish an election takes
8 place. We have to make an election take place, and
9 it takes time and it takes funding.

10 CHAIRMAN GALVANO: Yes, follow up.

11 REPRESENTATIVE MCBURNEY: Thank you,
12 Mr. Chairman. I know that the -- or my
13 understanding was the Supervisors met recently.
14 Was there any discussion of statewide cost
15 estimates for conducting a special election?

16 MR. ERTEL: I was not part of that meeting.
17 That is an Association meeting. I am not part of
18 the Association. So that is one of the reasons I
19 am here individually.

20 CHAIRMAN GALVANO: Senator Montford, you are
21 recognized.

22 SENATOR MONTFORD: Thank you, Mr. Chair, and,
23 first of all, Supervisor, thank you for your
24 service to this country. Thank you for putting
25 into perspective the real important job that we

1 have been challenged with doing here. So thank
2 you.

3 MR. ERTEL: Thank you, sir.

4 SENATOR MONTFORD: That is one of the best
5 things we have heard. You mentioned you would meet
6 with the Secretary of State and those that are
7 affected. Do you already -- know, have you all
8 figured out who that might be already? Are you all
9 going to meet? Have you all made that decision
10 with the Secretary?

11 MR. ERTEL: The Secretary of State has been --
12 through the court, the court finding has been
13 charged with meeting with the impacted Supervisors
14 of Elections and getting together. So he has been
15 very active in ensuring that we are all well
16 informed with what is going on along the way as
17 each step of the process takes place.

18 But that I think it is probably best to wait
19 for that meeting to take place until he knows what
20 the actual lines are going to be and what the
21 impacted counties are.

22 SENATOR MONTFORD: Mr. Chair.

23 CHAIRMAN GALVANO: Yes.

24 SENATOR MONTFORD: That was my concern, if you
25 have already made that decision maybe ahead of the

1 game, but you answered that.

2 Without putting you really on the spot, can we
3 get it done by December of this year?

4 MR. ERTEL: Legally there would have to be a
5 variety of laws changed in the state and in the
6 Federal government in order to try to do something
7 that potentially could open up some polling
8 locations. Realistically, December -- what goes on
9 in December? Hanukkah starts on the 16th of
10 December.

11 What goes on in November? Thanksgiving,
12 people start going away on vacation. In Seminole
13 County we have 56 percent of our 80 polling
14 locations are in houses of worship. I have a hard
15 time believing they are all going to be available
16 in the month of December.

17 I have a hard time believing that our poll
18 workers that we bring on board are going to be as
19 available in the month of December. And when we
20 bring on poll workers, we don't bring on a poll
21 worker and hand them a card and say, have at it.
22 We train them. So they go through a training and
23 then we also have election day as well.

24 There is early voting periods as well. We
25 need to be very aware of providing for a reasonable

1 voting early period for any election. Floridians
2 are used to early voting. The Legislature last
3 year increased the number of hours -- I'm sorry --
4 the number of days of early voting, the number of
5 early voting location options, fully understanding
6 that voters are very used to using early voting and
7 want early voting to continue.

8 Florida is actually at the forefront of
9 ensuring that Florida voting is long, it's easy to
10 access and it is available for as many voters, at
11 least at the past legislative session. We have
12 moved a lot of steps forward on that.

13 SENATOR MONTFORD: Thank you, Mr. Chair.

14 CHAIRMAN GALVANO: Senator Gibson, you are
15 recognized.

16 SENATOR GIBSON: Thank you, Mr. Chair. My
17 first question has to do with what would happen to
18 the military ballot that we have already sent out
19 and absentee ballots. What are the mechanics
20 involved with those ballots? Do you have to throw
21 them in the trash and recall the ones that are --
22 what's the mechanics of that?

23 MR. ERTEL: Senator, what we do after every
24 single election, every element of the election that
25 is vital to the election, itself, we keep for 22

1 months. So we keep for nearly two years in our
2 office, sealed, if possible, in the original
3 container that they came in, the voted ballots that
4 have already come back.

5 In this election I believe that the wise
6 Supervisors of Elections are going and making sure
7 and it is wise Supervisors of Elections that are
8 impacted by this, are making sure that we are
9 separating and we are keeping anything related to
10 this election easy to obtain and easy to get to,
11 because it's going to be contested in court and
12 every local elections office will be called upon.

13 It's going to be by the court after this
14 election no matter what takes place, I believe. It
15 is going to be like the Oprah episode where she
16 says, you get a car, you get a car, you get a car,
17 you know, it's kind of like, you are getting
18 subpoenaed, you are getting subpoenaed, you are
19 getting subpoenaed. We are all going to end up in
20 court after this election no matter what the lines
21 are drawn.

22 So we are holding onto everything and we are
23 making sure that it is available.

24 CHAIRMAN GALVANO: Follow up, yes, please.

25 SENATOR GIBSON: Thank you, Mr. Chair. But

1 those that are returning, you have to put them in a
2 box and then you would have to re-mail out new
3 ballots for a special election. That is one
4 question.

5 And then just to wrap up so I don't have to
6 come back. Secondly, what is your experience with
7 turnout in a special election and you still have to
8 go through all the steps of early voting, and et
9 cetera? What is the percentage in early and a
10 special?

11 CHAIRMAN GALVANO: You are recognized.

12 MR. ERTEL: Thank you. I think that we should
13 wait until the court comes down with what they're
14 going to say on timelines to determine what happens
15 with those ballots. Would we be sending those
16 voters new ballots? It really waits on the
17 timeline of the election. So there is so many
18 silos of timelines that we could go up. I don't
19 want to have to explain what we would have to do if
20 the election were to take place on September 1st,
21 what we would do if it would take place on
22 September 2nd.

23 We would definitely comply with whatever the
24 Court orders, but I believe the Court would order
25 an election with timelines that would not violate

1 Florida or Federal law.

2 And the follow up question on special
3 elections. We had a special election in Pinellas
4 County for a Congressional district just last year.
5 The turnout in that election I believe was around
6 39 percent. The turnout statewide for the election
7 that took place in 2010 was around 49 percent, our
8 statewide general election. And our statewide
9 general election in 2012 was around 72 percent.

10 So a special election will have a lower
11 turnout but the percentage lower is not as great as
12 it would be between a gubernatorial election and a
13 presidential election. Does that answer your
14 question, Senator?

15 SENATOR GIBSON: Yes.

16 CHAIRMAN GALVANO: Senator Simmons, you are
17 recognized.

18 SENATOR SIMMONS: Yes. Mr. Ertel, given the
19 fact that as I understand it since these are going
20 to be new and different districts, therefore, they
21 would have to be opening up and having the time to
22 qualify by new candidates and giving them an
23 opportunity to, in fact, raise money, give them the
24 opportunity to meet the voters -- in some areas
25 they have spent time in areas that are going to

1 outside of their new district. The whole process
2 of raising money, getting out to the voters, giving
3 the voters the ability to make an intelligent
4 decision as to who to vote for, what do you
5 recommend as a time frame for this Legislature at
6 the earliest?

7 CHAIRMAN GALVANO: You are recognized.

8 MR. ERTEL: Thank you, Chair. I recommend
9 that we follow with what all of the counties come
10 together with the Secretary of State when we all
11 meet. I can't foresee that meeting coming together
12 and all of us agreeing that we should do something
13 that violates any Federal or State law.

14 So if you move forward from that, when you
15 consider our election that is taking place right
16 now, we have -- you know, we seal -- and this is
17 truly mechanics, I am sorry, Senator, for getting
18 too much into the weeds here. We seal all of our
19 voting machines and we seal the bags that come back
20 with the ballots. We seal the election, itself.
21 We seal that election, itself, until not only
22 election night, until not only between seven and 10
23 days, depending on the type of election after the
24 election, we seal it for the 10 days past that
25 which is the contest period where a candidate or a

1 member of the public can contest any election that
2 takes place.

3 So for this August 26 election, we are talking
4 about the middle of September before we can even
5 open up and unseal that election that is taking
6 place on August 26.

7 CHAIRMAN GALVANO: Follow up, you are
8 recognized.

9 SENATOR SIMMONS: Irrespective of what -- you
10 know, coming together and what the others would do,
11 what would be your recommendation to us given your
12 own experience in your professional opinion? Are
13 we taking a viable election before the end of 2014,
14 or is it sometime later?

15 CHAIRMAN GALVANO: You are recognized.

16 MR. ERTEL: Thank you, Mr. Chair. Senator, I
17 think a viable election would be one that includes
18 the aspects of an election. And so, if you look at
19 the timelines that are necessary, I don't believe
20 that we can have one of those viable elections that
21 includes the 45 days for a military voters to
22 ensure that they receive their ballots. That is a
23 Federal law, that includes the qualification period
24 for the candidates, that includes the time frame
25 where the petitions for candidates, because some

1 candidates don't want to have to pay to get on the
2 ballot. They want the opportunity to get on the
3 ballot through community support, and petitions
4 being signed and them being verified by the office
5 and letting that candidate know that they have
6 enough petitions in order to qualify without having
7 to write a check.

8 So to answer your question, I don't believe
9 that the 2014 election, under any current Florida
10 or Federal -- without changing current Florida law
11 changing, current Federal law, is doable.

12 CHAIRMAN GALVANO: Okay. Thank you, sir. I
13 appreciate your time here this afternoon.

14 Senators, House members, do we have any
15 further questions or comments before the committee?

16 If I am not mistaken you are not on the
17 committee. I think we are recognizing at this
18 point the actual committee members. Thank you.

19 Anyone further? President Lee.

20 PRESIDENT LEE: Mr. Chair, as we wrap up, are
21 you going to kind of tell us, you and Chair
22 Corcoran tell us kind of where we are at here in
23 terms of process and what is out there and what we
24 are going to be doing tomorrow? Is that kind of
25 the plan here?

1 CHAIRMAN GALVANO: Yes, yes, Mr. President.
2 Of course, my comments will be directed to the
3 Senators and they may have a completely different
4 idea of where they're going.

5 If there are no more comments, I will get to
6 that right now. Tomorrow we are going to meet at
7 10:15 in the morning, a.m., Leader Smith, and we
8 are meeting until 6:00 p.m.

9 Tomorrow we will take up Senate Bill 2-A and
10 any amendments that have been filed to that Bill.
11 The amendment filing deadline for taking up
12 amendments to Senate 2-A is 8:15 tomorrow morning.
13 If you recall I said on the floor this morning that
14 the mapping process is a time-consuming process.
15 So, Senators, if there are amendments that you are
16 bringing forward, please make sure that you don't
17 do it at 8:00 a.m., but substantially before then.

18 We have or I have filed an amendment to Senate
19 Bill 2-A that is available for view and review
20 presently that has -- it is the product of staff in
21 the House and the Senate together with Chairman
22 Corcoran and myself and legal counsel that is a
23 remedial plan that addresses the concerns to CD 5
24 and CD 10, and also makes conforming changes to the
25 districts impacted.

1 So I would suspect the very first thing we
2 will do tomorrow once we see what amendments are
3 there is take those amendments up, and, in the
4 course of that, obviously, take up the amendment
5 that is available for your view presently.

6 Chairman Corcoran, for the House.

7 CHAIRMAN CORCORAN: Similarly, we will go in
8 tomorrow at 10:15. We have a PCB -- the map itself
9 is already online and available to all members.
10 The actual language and analysis will be available
11 tonight. The amendment filing deadline is 9:50
12 tomorrow morning, and we are scheduled to go to
13 6:00 p.m. also.

14 CHAIRMAN GALVANO: Okay. If there is no other
15 business before the Senate Committee, Senator
16 Gibson moves we rise. Senator Rodriguez moves we
17 rise.

18 (Whereupon, the proceedings were concluded at
19 5:07 p.m.)

1 CERTIFICATE OF REPORTER
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5 I, CLARA C. ROTRUCK, do hereby certify that I
6 was authorized to and did report the foregoing
7 proceedings, and that the transcript, pages 02 through
8 105, is a true and correct record of my stenographic
9 notes.
10

11 Dated this 8th day of August, 2014, at
12 Tallahassee, Leon County, Florida.
13

14 _____
15 CLARA C. ROTRUCK

16 Court Reporter
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