**IN THE SUPREME COURT OF FLORIDA**
**CASE NO.: SC12-1**

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IN RE: JOINT RESOLUTION OF
LEGISLATIVE APPORTIONMENT

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# BRIEF OF ATTORNEY GENERAL PAMELA JO BONDI


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## STATEMENT OF THE CASE AND FACTS

On February 9, 2012, the Legislature passed a joint resolution of apportionment (Senate Joint Resolution (SJR) 1176) as required by article III, section 16(a), of the Florida Constitution.[1] SJR 1176 apportions the Florida House of Representatives and Senate based on the population figures established in the 2010 census. As required by article III, section 16(c), the Attorney General filed on February 10, 2012, a petition for declaratory judgment in this Court to determine the validity of the apportionment.

This Court's only role in this proceeding is to determine whether SJR 1176 facially complies with requirements in the United States and Florida Constitutions. Art. III, § 16(c), Fla. Const. The Court operates under a very tight timetable and

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[1] Article III, section 16 of the Florida Constitution provides in relevant part:

(a) SENATORIAL AND REPRESENTATIVE DISTRICTS. The legislature at its regular session in the second year following each decennial census, by joint resolution, shall apportion the state in accordance with the constitution of the state and of the United States into not less than thirty nor more than forty consecutively numbered senatorial districts of either contiguous, overlapping or identical territory, and into not less than eighty nor more than one hundred twenty consecutively numbered representative districts of either contiguous, overlapping or identical territory. * * *

(c) JUDICIAL REVIEW OF APPORTIONMENT. Within fifteen days after the passage of the joint resolution of apportionment, the attorney general shall petition the supreme court of the state for a declaratory judgment determining the validity of the apportionment. The supreme court, in accordance with its rules, shall permit adversary interests to present their views and, within thirty days from the filing of the petition, shall enter its judgment.

must enter its judgment within 30 days after the petition is filed—by March 11, 2012, in this case.

Under clear standards established in 2002 and in the other previous apportionment cases, this Court will conduct an "extremely limited, facial" review of SJR 1176. *See, e.g., In re Constitutionality of House Joint Resolution 1987* ("*2002 Apportionment*"), 817 So. 2d 819, 824-25 (Fla. 2002). The Court will consider SJR 1176 to be presumptively valid, and will invalidate it only if the plans facially conflict with constitutional standards, irrespective of whether it is the "best plan." *In re Constitutionality of Senate Joint Resolution 2G, Special Apportionment Session 1992* ("*1992 Apportionment*"), 597 So. 2d 276, 285 (Fla. 1992)). Challengers asserting fact-based claims will be directed to other courts "where there is an opportunity to present evidence and witness testimony and where the court has the ability to make factual findings based on the evidence presented." *See 2002 Apportionment*, 817 So. 2d at 829.

The nature and scope of this Court's practice was not affected by the adoption of new standards in article III, Section 21, of the Florida Constitution in 2010 (Amendment 5). Amendment 5 did nothing to expand the 30-day window for this Court's review, or to enhance its ability to address fact-based claims as part of the review. *See* Art. III, § 16(c), Fla. Const.

On January 5, 2012, this Court ordered that all briefs and comments related to SJR 1176 must be filed within 7 days of the Attorney General's initiation of this action—by February 17, 2012. The order further authorized the Attorney General to file her own views by this same deadline.

## SUMMARY OF THE ARGUMENT

This Court conducts its 30-day review of legislative apportionment plans according to clear and well-established parameters. Just as it did in 2002, and in all other previous reviews, this Court should conduct an "extremely limited, facial review" of SJR 1176 that presumes the validity of the Legislature's work, does not attempt to find a "perfect" plan, and validates the plan on its face unless there is obvious, facial error. By adhering to its well-established practices, this Court will honor separation of powers principles and respect the institutional and time limitations forced upon it in this 30-day review, particularly as an appellate court that cannot undertake weeks of fact-finding or even entertain responsive briefs.

This Court should again leave consideration of "fact-based claims" to other courts of competent jurisdiction. *See 2002 Apportionment*, 817 So. 2d at 825. This Court has repeatedly acknowledged that it is not situated to entertain fact-intensive voting rights claims within 30-day review proceedings and consistently refused to address them. In fact, this Court has conceded that it is "impossible" for it to conduct a complete factual analysis of voting rights claims within existing time and structural constraints. *Johnson v. DeGrandy,* 512 U.S. 997, 1005 (1994) (quoting *1992 Apportionment*, 597 So. 2d at 282). For this reason, the Court's judgment of validity should be entered without prejudice to the challengers' ability to assert fact-based claims in an appropriate trial court.

Moreover, while new Amendment 5 standards introduced within article III, section 21, of the Florida Constitution, increase the potential for challenges to SJR 1176, it should not alter this Court's well-established practices or the nature of its 30-day review. Section 21-based challenges to the plans inevitably will require complex, fact-based litigation in order to be fairly and credibly resolved, approximating those challenges that this Court always has directed to other courts for a full and fair hearing. The same should happen here. No one can reasonably expect this Court to resolve fact-intensive, section 21-based claims within the 30-day review process when Amendment 5 did not extend the time for review under section 16(c) or otherwise facilitate this Court's capacity to evaluate such claims. Even before the passage of Amendment 5, this Court explicitly acknowledged that it lacked the constitutional time and structure to fully and fairly resolve fact-based claims. Just as with Voting Rights Act (VRA) claims previously addressed by this Court, this Court should leave fact-based section 21 claims to other courts, which will also ensure that due process concerns on all sides will be satisfied within typical litigation processes, including an opportunity to respond and adduce facts. *See 2002 Apportionment*, 817 So. 2d at 831 (declaring that "the Legislature and other proponents of the redistricting plan *must be afforded an opportunity to respond* to any evidence of discriminatory effect") (emphasis added).

## ARGUMENT

### I. The Parameters Of This Court's 30-day Review Are Clear And Well-Established By Its Prior Cases.

The overall outlines of this Court's 30-day review of legislative apportionment plans are clear, well-established, and tested by their application in earlier review proceedings. Change now is unwarranted. This Court's current review should encompass an "extremely limited … facial" review of SJR 1176, in which it presumes the validity of the Legislature's work and upholds the plans absent some obvious constitutional flaw on the face of the plans. *2002 Apportionment*, 817 So. 2d at 824-25. Due to time and structural limitations inherent in the 30-day review process, this Court's ruling should not affect the ability of challengers to assert fact-based claims in other appropriate courts of competent jurisdiction.

#### A. This Court Presumes the Validity of the Legislature's Work and Takes No Account of Whether It Is the "Best" Plan.

Consistent with its prior opinions, this Court in 2002 held that joint resolutions of apportionment, like all legislative enactments, are presumptively valid. *2002 Apportionment*, 817 So. 2d at 825 (citing *In re Apportionment Law SJR 1305*, 263 So. 2d 797, 805-6 (Fla. 1972) (*1972 Reapportionment*). "Unless it can be shown that the joint resolution of apportionment facially violates some provision of the United States Constitution or the Florida Constitution, this Court may not declare the joint resolution

invalid." *Id.* Once again, the Court should give substantial deference to the legislatively submitted plans and presume them valid.

Since the 1968 constitutional revision redefined the apportionment process, this Court has consistently honored the Legislature's central role and authority:

> Legislative reapportionment is primarily a matter for legislative consideration and determination. Judicial relief becomes appropriate only when a legislature fails to reapportion according to federal and state constitutional requisites.

*1972 Apportionment*, 263 So. 2d at 799-800; *see also* Art. III, § 16(a), Fla. Const. (delegating explicit responsibility for apportionment to the Legislature). This Court has consistently upheld plans on their face without regard to whether it agrees or not with underlying policy judgments made by the Legislature in drawing new district lines.

> If [constitutional] requisites are met, we must refrain, at this time, from injecting our personal views into the proposed reapportionment plan. Even though we may disagree with the legislative policy … the fundamental doctrine of separation of powers and the constitutional provisions relating to reapportionment require that we act with judicial restraint so as not to usurp the primary responsibility for reapportionment, which rests with the Legislature.

*1972 Apportionment*, 263 So. 2d at 800.

This Court's established inquiry is thus quite simple: absent a clear violation of constitutional requirements on the face of the plans, it will not declare them invalid. *See 2002 Apportionment*, 817 So. 2d at 825. The very same deference applies here as

when this Court judges the constitutionality of laws—"this court, in accordance with the doctrine of separation of powers, will not seek to substitute its judgment for that of another coordinate branch of government." *1972 Apportionment*, 263 So. 2d at 806; *see also id.* at 805-6 ("No duly enacted statute should be judicially declared to be inoperative … unless it clearly appears beyond all reasonable doubt that, under any rational view that may be taken of the statute, it is in positive conflict with some identified or designated provision of constitutional law") (quoting *City of Jacksonville v. Bowden*, 64 So. 769, 772 (Fla. 1914)); Art. II, § 3, Fla. Const. (prohibiting one branch of government from "exercis[ing] any powers appertaining to either of the other branches unless expressly provided herein").

Legislative deference prevails even where the plan is not perfect. Of course, plan perfection is unobtainable; there is no such thing as a "perfect plan." Just as in the past, this Court should disregard claims of challengers armed with competing maps and arguments about a more perfect plan. "In fact, there may be a better plan. However, [the Court's] job is not to select the best plan, but rather to decide whether the one adopted by the legislature is valid." *1992 Apportionment*, 597 So. 2d at 285. A reapportionment plan is not rendered unlawful just because some "resourceful mind" comes up with a plan purporting to be perfect. *See Gaffney v. Cummings,* 412 U.S. 735, 750-51 (1973); *cf. Cole-Randazzo v. Ryan*, 762 N.E.2d 485, 488 (Ill. 2001) ("we have no basis for assessing whether the proposed alternatives would be legally

acceptable and … superior, on balance, to the plan approved and filed by the Commission"). Instead, this Court should stick to its established practice of honoring separation of powers principles by not judging the validity of legislatively drawn plans by comparison to some theoretically "perfect" or "best" plan.

The United States Supreme Court likewise has urged the utmost deference to state legislatures and repeatedly warned against judicial second-guessing of apportionment decisions:

> Inviting attack on minor departures from some supposed norm would too much embroil the judiciary in second-guessing what has consistently been referred to as a political task for the legislature, a task that should not be monitored too closely *unless the express or tacit goal is to effect its removal from legislative halls*. We decline to take a major step toward that end, which would be so much at odds with our history and experience.

*Davis v. Bandemer,* 478 U.S. 109, 133-34 (1986) (emphasis added). *See also McDaniel v. Sanchez,* 452 U.S. 130, 150 n.30 (1981) ("redistricting and reapportioning legislative bodies is a legislative task which the … courts should make every effort not to pre-empt") (quoting *Wise v. Lipscomb*, 437 U.S. 535, 539 (1978)); *Perry v. Perez*, __ S.Ct. __, No. 11-713, slip op. at 5 (U.S. Jan. 20, 2012) (per curiam) (warning against "displacing legitimate state policy judgments with the court's own preferences").

Judicial second-guessing in this area is particularly unwarranted because objective redistricting standards often conflict and require compromise when applied to

specific factual circumstances. *See, e.g., In re Town of Woodbury*, 861 A.2d 1117, 1124 (Vt. 2004) ("it is impossible to absolutely comply with all numerical and nonnumerical criteria in all districts"); *Mayor of Cambridge v. Sec. of the Commonwealth*, 765 N.E.2d 749, 754 (Mass. 2002) ("It would be impossible for the Legislature to satisfy all of the requirements perfectly in any one redistricting plan because, at times, the various requirements inevitably conflict."); *Ariz. Minority Coal. For Fair Redistricting v. Ariz. Indep. Redistricting Comm'n*, 121 P.3d 843, 857 (Ariz. Ct. App. 2005) ("districting decisions require judgment, particularly because the Commission is charged with considering a number of variables that may often conflict with each other"). The difficulty of reapportionment and judgment required to balance competing requirements suggests that this Court should continue to show high-level deference to the legislatively-drawn plans as it has always done. *See Miller v. Johnson*, 515 U.S. 900, 915 (1995) ("Electoral districting is a most difficult subject for legislatures, and so the States must have discretion to exercise the political judgment necessary to balance competing interests.").

Accordingly, this Court should presume the validity of SJR 1176 in deference to the Legislature's constitutional role and without regard to whether the plans are perfect or the "best" plan.

### B. This Court Conducts Only a Limited Facial Review of the Apportionment Plans and Will Approve Them Absent Some Obvious Facial Error.

This Court's established practice also dictates that it undertake only an "extremely limited … facial" review of SJR 1176 within the 30-day period. *2002 Apportionment*, 817 So. 2d at 824-25; *In re Constitutionality of House Joint Resolution 25E*, 863 So. 2d 1176, 1178 (Fla. 2003).

In its 2002 opinion, this Court held that its 30-day review is limited to facial issues and directed fact-based challenges to other courts: "the confines of article III, section 16(c), adopted as part of the 1968 revision to Florida's Constitution, do not allow for a fact-intensive review within our thirty-day window." *2002 Apportionment*, 817 So. 2d at 825. In fact, all previous reviews since 1968, when article III, section 16's requirements were adopted, have consisted of very limited reviews of the plans passed by the Legislature. This Court has repeatedly concluded that its thirty-day review is "extremely limited" and does not allow for "fact-intensive review." *2002 Apportionment*, 817 So. 2d at 824-25; *see also 1992 Apportionment*, 597 So. 2d at 282; *In re Apportionment Law Appearing as Senate Joint Resolution 1 E, 1982 Special Apportionment Session* ("*1982 Apportionment*"), 414 So. 2d 1040, 1045 (Fla. 1982); *1972 Apportionment*, 263 So. 2d at 808. This is because time and structural limitations make review of complex claims "highly problematic" (*2002 Apportionment*, 817 So. 2d at 829 n.13), "impractical" (*1972 Apportionment*, 263 So. 2d at 808), and

"impossible" (*DeGrandy,* 512 U.S. at 1005 (quoting *1992 Apportionment*, 597 So. 2d at 282)), within the confines of a 30-day review.

In 1972, for instance, this Court reviewed plans for adherence to the one-person, one-vote constitutional requirement, as well as the requirement that districts contain contiguous, overlapping, or identical territory. *See 1972 Apportionment*, 263 So. 2d at 802, 805-7. The Court, however, strictly limited all other fact-related review:

> The other grounds of protesters' attacks on the validity of the apportionment plan are based upon factual situations. For a proper determination of these contentions, it would be necessary for testimony to be taken and additional evidence presented. We have considered the appointment of commissioners for this purpose, but such a course is impractical under Fla.Const., art. III, s 16(c), F.S.A., mandating us to enter a judgment within thirty days from the filing of the petition by the Attorney General. * * *
>
> This opinion should serve as a caveat to prospective candidates in that we are only determining the validity of the apportionment plan on its face.
>
> The Florida Constitution contemplates that our judgment in these proceedings be limited to a declaration that the apportionment plan on its face is either valid or invalid under the Constitution of the United States and the Constitution of the State of Florida. We hold that it is valid on its face.

*Id.* at 808.

A decade later, in 1982, this Court likewise limited its article III, section 16 review. *1982 Apportionment*, 414 So. 2d at 1052; *see also, e.g., id.* at 1045 (reviewing an "important dependent matter" under article III, section 16, "because … no fact-finding" was required). In 1992, this Court first attempted to resolve a more complex

Voting Rights Act-based claim, but ultimately limited its review to undisputed statistical data in the record. *See 1992 Apportionment*, 597 So. 2d at 282. The 1992 review was, according to the United States Supreme Court, a "preliminary look" that had no preclusive effects upon other courts:

> [T]he Supreme Court of Florida accepted briefs and evidentiary submissions, but held no trial. In that court's own words, it was "impossible ... to conduct the complete factual analysis contemplated by the Voting Rights Act ... within the time constraints of article III."

*DeGrandy,* 512 U.S. at 1005 (quoting *1992 Apportionment*, 597 So. 2d at 282).

Here, once again, the Court should continue its prudent policy of completing only a limited, 30-day facial review of SJR 1176, without attempting to resolve fact-based claims.

### C. This Court Directs Fact-Intensive Challenges to the Plans to Other Courts.

As it has in the past, this Court should direct fact-based claims to courts of competent jurisdiction elsewhere. This Court's 2002 opinion held that fact-based challenges, including claims sounding in voting rights law, must be resolved in other courts. *2002 Apportionment*, 817 So. 2d at 832 (making its ruling "without prejudice to the right of any protestor to file an as-applied challenge to the validity of the plan"). This Court refused, for instance, to entertain fact-intensive race and language minority discrimination claims, stating:

> Such claims are better suited for a court of competent jurisdiction where there is an opportunity to present evidence and witness testimony and where the court has the ability to make factual findings based on the evidence presented. Therefore, we decline to rule on these claims in this proceeding.

*Id.* at 829. The Court suggested, however, that challengers might attempt to raise "a race-based equal protection claim, a Section 2 [of the Voting Rights Act] claim, or a political gerrymandering claim" in other courts. *Id.* at 832. *See also 1992 Apportionment*, 597 So. 2d at 282 (leaving fact-intensive issues for resolution in other litigation); *1982 Apportionment*, 414 So. 2d at 1052 (validating legislative plans without prejudice to as-applied claims raised "in appropriate proceedings").

Justice Lewis' opinion in 2002, joined by three other Justices, presciently described the growing trend of fact-intensive, complex apportionment-related challenges and this Court's inability to resolve such claims in 30 days. First, he noted the Court's rock-solid respect for constitutional parameters in "steadfastly follow[ing]" the constitutional 30-day structural time limitation "even as the scope and nature of redistricting challenges have expanded in depth and complexity." *Id.* at 833. Next, he reviewed the history of article III, section 16 and observed that the provision simply was not designed to permit the Court "to explore depth and complexity of the issues implicated today" by modern challenges to apportionment plans. *Id.* at 834. Then, Justice Lewis' opinion concedes quite candidly that "this Court is not designed, nor is it structured, to engage in" typical trial court processes

such as "adversarial testing of evidence, fact finding, or any other significant factual examinations" of reapportionment plans:

> Due to the time restrictions and structural limitations imposed by the Florida Constitution, and absent clear error, we have been afforded neither the constitutional time nor constitutional structure to engage in the type of fact-intensive, intricate proceedings required to adjudicate the vast majority of the claims presented by the opponents here or the responses of the legislative bodies. The parameters of our review simply do not allow us to competently test the depth and complexity of the factual assertions presented by the opponents.

*Id.* at 836.

Leaving fact-based claims to other courts will also satisfy due process concerns by affording typical litigation processes to resolve fact-based claims. In other words, all the parties will benefit from "a court of competent jurisdiction where there is an opportunity to present evidence and witness testimony where the court has the ability to make factual findings based on the evidence presented." *Id.* at 829. This arrangement also will satisfy this Court's concern that "the Legislature and other proponents of the redistricting plan *must be afforded* an opportunity to respond to any evidence of discriminatory effect." *Id.* at 831 (emphasis added).

In sum, this Court's established practice and clearly expressed limitations counsel that it not resolve fact-based challenges within this 30-day review, but re-

direct their filing to other courts, such as the Second Judicial Circuit Court in and for Leon County, Florida,[2] or another appropriate court of competent jurisdiction.

## II. New Amendment 5 Standards Incorporated Into Article III, Section 21, Of The Florida Constitution, Do Not Change The Nature And Limitations Of This Court's 30-Day Review.

This Court's well-established manner of handling 30-day reviews should not change in view of Florida's adoption of new constitutional standards for drawing apportionment plans. *See* Art. III, § 21, Fla. Const.[3]

Amendment 5 did nothing to expand the time or otherwise enhance this Court's ability to address fact-based claims, even while it increased the potential for

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[2] Venue in civil actions brought against the state or a state agency, absent waiver or exception, properly lies in the county where the state or agency maintains its principal headquarters. *See* §§ 47.011, 47.122, Fla. Stat. (2011); *Smith v. Williams*, 35 So. 2d 844, 847-8 (Fla. 1948) (creating the home venue privilege); *Carlile v. Game & Fresh Water Fish Comm'n*, 354 So. 2d 362, 363-4 (Fla. 1977).

[3] Article III, section 21, of the Florida Constitution provides:

> **SECTION 21. Standards for establishing legislative district boundaries**.— In establishing legislative district boundaries:
>
> (a) No apportionment plan or district shall be drawn with the intent to favor or disfavor a political party or an incumbent; and districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice; and districts shall consist of contiguous territory.
>
> (b) Unless compliance with the standards in this subsection conflicts with the standards in subsection 1(a) or with federal law, districts shall be as nearly equal in population as is practicable; districts shall be compact; and districts shall, where feasible, utilize existing political and geographical boundaries.
>
> (c) The order in which the standards within subsections 1(a) and (b) of this section are set forth shall not be read to establish any priority of one standard over

(Continued …)

litigants to mount complex, fact-based challenges to legislatively drawn apportionment plans.[4] Nothing has changed, for instance, since this Court recognized in 2002, that "[t]he juxtaposition of [highly complex] claims onto this Court's article III, section 16(c) review is *highly problematic*." *2002 Apportionment*, 817 So. 2d at 829 n.13 (emphasis added). *See also id.* at 836 (Lewis, J.) (noting the Court to have "neither the constitutional time nor constitutional structure to engage in … fact-intensive, intricate proceedings [or to] competently test the depth and complexity of the factual assertions presented by the opponents").

Adopted as Amendment 5 by voters in 2010, section 21 creates a new two-tiered standard for drawing legislative districts in Florida:

> *Tier One* requirements in subsection (a) require four things of legislative apportionment plans: (1) districts may not be drawn with the intent to favor or disfavor a political party or incumbent; (2) districts may not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process; (3) districts may not be drawn to diminish the ability of racial or

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the other within that subsection.

[4] For example, the Office of the State Courts Administrator assumed that "litigation will increase" if Amendment 5 passed. See *INITIATIVE FINANCIAL INFORMATION STATEMENT: STANDARDS FOR LEGISLATURE TO FOLLOW IN LEGISLATIVE REDISTRICTING*, at 1, http://www.edr.state.fl.us/Content/constitutional-amendments/2010Ballot/RedistrictingAmendments/FinancialInformationStatementLegislativeRedistrictingafterremand.pdf (last visited Feb. 15, 2012).

> language minorities to elect representatives of their choice; and (4) districts must be contiguous;
>
> *Tier Two* requirements in subsection (b) require that districts (1) be as nearly equal in population as practicable; (2) be compact; and (3) where feasible, utilize existing political and geographical boundaries; and
>
> Per subsection (b), *Tier One* requirements have priority over *Tier Two* requirements; but requirements within a given tier are not prioritized, *see* subsection (c).

But, whereas Amendment 5 adds substantial complexity to district drawing requirements and to the likelihood of litigation, it did not adjust or alleviate the "severe structural time limitation for a determination by this institution." *2002 Apportionment*, 817 So. 2d at 834 (Lewis, J., concurring).

Claims based on section 21's new standards would certainly require complex, fact-intensive litigation in order to be fairly and credibly resolved, approximating those challenges that this Court has always directed elsewhere and not addressed within the 30-day review period. For example, in 2002 this Court refused to resolve equal protection claims, Voting Rights Act-based claims, and political gerrymandering claims. *Id.* at 832. Claims brought now based on section 21 would closely resemble these very claims. For instance, a claim brought under section 21's minority voting-rights standards would be analogous to a VRA-based challenge and require the same "necessarily fact-intensive inquiry." *Martinez v. Bush*, 234 F. Supp.2d 1275, 1298 (S.D. Fla. 2002). *See Brown v. Sec'y of State of*

*Fla.*, No. 11-14554, 2012 WL 264610, at *8 (11th Cir. Jan. 31, 2012) (noting that the voting-rights provisions of Amendment 6 "follow[] almost verbatim the requirements embodied in the Voting Rights Act").[5]

Similarly, a section 21 challenge based on whether the plan favors or disfavors incumbents or political parties resembles a political gerrymandering claim that requires "specific supporting evidence." *See, e.g., Fla. Senate v. Forman*, 826 So. 2d 279, 280-81 (Fla. 2002). These inquiries are inherently fact intensive.

In the same vein, compactness challenges cannot be resolved without facts and careful review of evidence of how other constitutional requirements impinge upon the Legislature's ability to draw compact districts. In 2001, the Illinois Supreme Court well-described the complexity of compactness claims:

> [T]he issue of compactness cannot be considered in isolation. The formulation of redistricting plans involves complicated considerations requiring careful study and a weighing of factors. ... Districts must also be substantially equal in population [and] configured in such a way as to provide adequate representation to minorities and other special interests protected by state and federal law, and they must meet all legal requirements regarding political fairness. … Because of that, an insistence on narrow, exact or inflexible measures of compactness would make adherence to the additional requirements we have recognized virtually impossible.

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[5] For instance, the trial court's findings of fact in a VRA minority vote-dilution challenge in 2002 (involving two Florida Senate districts and eight House districts) stretch for almost 10 single-spaced, double-columned pages of the case reporter. *Martinez*, 234 F. Supp.2d at 1310-1319. *See also Georgia v. Ashcroft*, 195 F. Supp. 2d 95 (D.D.C. 2002) (requiring 6 months (and a 4-day trial) to resolve Georgia's VRA, section 5 suit, despite a "demanding" discovery and briefing schedule).

*Beaubien v. Ryan*, 762 N.E.2d 501, 506 (Ill. 2001). As a consequence, a court that passes on a section 21-based compactness challenge will have to study and weigh a complex set of interrelated variables, and afford the proponents and opponents alike an opportunity to develop the record and file responsive briefs.

All told, the advent of section 21 should not change the way this Court conducts 30-day apportionment validity reviews. This Court has always chosen the prudent path of channeling fact-intensive challenges to trial courts for full factual development and resolution. In this way, due process concerns on all sides will be satisfied within normal litigation processes. *See 2002 Apportionment*, 817 So. 2d at 831 (requiring that "the Legislature and other proponents of the redistricting plan *must be afforded an opportunity to respond* to any evidence of discriminatory effect") (emphasis added).

Finally, proponents of Amendment 5 and challengers to SJR 1176 cannot reasonably expect any different outcome as to this Court's ability to resolve fact-intensive, section 21-based claims within the 30-day review process. Amendment 5 offered this Court *no* extension of section 16(c)'s time limit or other flexibility in spite of the major potential for new litigation introduced by section 21. A Court which possessed severe constitutional time and structural limitations before the

passage of Amendment 5 simply cannot be expected to fully and fairly resolve vast areas of fact-based, section 21 claims under the new complex standards.

As this Court remains in the very same constrained position that it has been in all previous 30-day reviews, it should continue its practice of completing an "extremely limited, facial review" of the plans passed by the Legislature. Fact-based section 21 claims should initially be brought in other courts to ensure that due process concerns are satisfied. *See 2002 Apportionment*, 817 So. 2d at 829, 831. This Court's policy of conducting only a limited facial review of compliance with constitutional standards continues to be appropriate and sensible, especially in view of the static 30-day deadline and the Court's acknowledged structural limitations.

## CONCLUSION

For these reasons, this Court should not deviate from well-established practices in conducting this 30-day review. Its judgment of validity should encompass an "extremely limited, facial" review of SJR 1176, which should be presumed valid and upheld absent some obvious constitutional flaw. Also, fact-based challenges to SJR 1176, including any made pursuant to article III, section 21, of the Florida Constitution, should not be considered or resolved within this review.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE/SERVICE

I certify that this brief is prepared in Times New Roman 14-point font consistent with Florida Rule of Appellate Procedure 9.210, and that a true copy of the foregoing has been furnished this 17th day of February, 2012, by U.S. Mail, to the following counsel listed on the Court website's Service List page as revised on February 16, 2012, at 4:10 p.m.:

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