IN THE SUPREME COURT OF FLORIDA

CASE NO. SC12-1

IN RE: JOINT RESOLUTION OF
LEGISLATIVE REAPPORTIONMENT

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# BRIEF OF CITY OF LAKELAND, FLORIDA, IN OPPOSITION TO JOINT RESOLUTION OF LEGISLATIVE APPORTIONMENT

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# TABLE OF CONTENTS

TABLE OF CONTENTS ..... i

TABLE OF AUTHORITIES ..... ii

PREFACE ..... iii

STATEMENT OF THE CASE AND FACTS ..... 1

SUMMARY OF ARGUMENT ..... 6

ARGUMENT ..... 7

A. THE SENATE DISTRICT MAPS VIOLATE THE NEW REQUIREMENT OF ARTICLE III, SECTION 21(b) OF THE FLORIDA CONSTITUTION TO UTILIZE EXISTING POLITICAL BOUNDARIES FOR THE REDISTRICTING OF STATE SENATE DISTRICTS ..... 9

B. THE SENATE DISTRICT MAPS VIOLATE THE NEW REQUIREMENT OF ARTICLE III, SECTION 21(a) OF THE FLORIDA CONSTITUTION WHICH PROHIBITS THE DRAWING OF SENATE DISTRICTS WITH THE INTENT TO FAVOR OR DISFAVOR A POLITICAL PARTY OR AN INCUMBENT ..... 19

CONCLUSION ..... 24

CERTIFICATE OF SERVICE ..... 26

CERTIFICATE OF COMPLIANCE ..... 29

## TABLE OF AUTHORITIES

### CASES

*Advisory Op. to Att'y Gen. re Standards for Establishing Legislative Dist. Boundaries*, 2 So. 3d 175 (Fla. 2009) .....10

*Caribbean Conservation Corp. v. Fla. Fish & Wildlife Conservation Comm'n*, 838 So. 2d 492 (Fla. 2003).....8, 9

*Davis v. Bandemer*, 478 U.S. 109 (1986) .....23

*Fla. Soc'y of Ophthalmology v. Fla. Optometric Ass'n*, 489 So. 2d 1118 (Fla. 1986).....8

*Gray v. Bryant*, 125 So. 2d 846 (Fla. 1960).....9

*In re Apportionment Law, Senate Joint Resolution No. 1305, 1972 Regular Session*, 263 So. 2d 797 (Fla. 1972).....12

*In re Constitutionality of Senate Joint Resolution 2G*, 597 So. 2d 276 (Fla. 1992).....20

*Pleus v. Crist*, 14 So. 3d 941 (Fla. 2009).....8, 9

*Zingale v. Powell*, 885 So. 2d 277 (Fla. 2004) .....8, 9

### FLORIDA CONSTITUTION

Art. III, § 16(c), Fla. Const. .....1

Art. III, § 21, Fla. Const.....7, 9, 10

Art. III, § 21(a), Fla. Const. .....*passim*

Art. III, § 21(b), Fla. Const. .....*passim*

## PREFACE

The City of Lakeland, Florida, will be referred to herein as "Lakeland" or the "City."

Senate Joint Resolution 1176, which is the subject of this proceeding, will be referred to as "SJR 1176."

References to the Appendices submitted by the Florida Attorney General will be referenced as follows: "Record at [page number]."

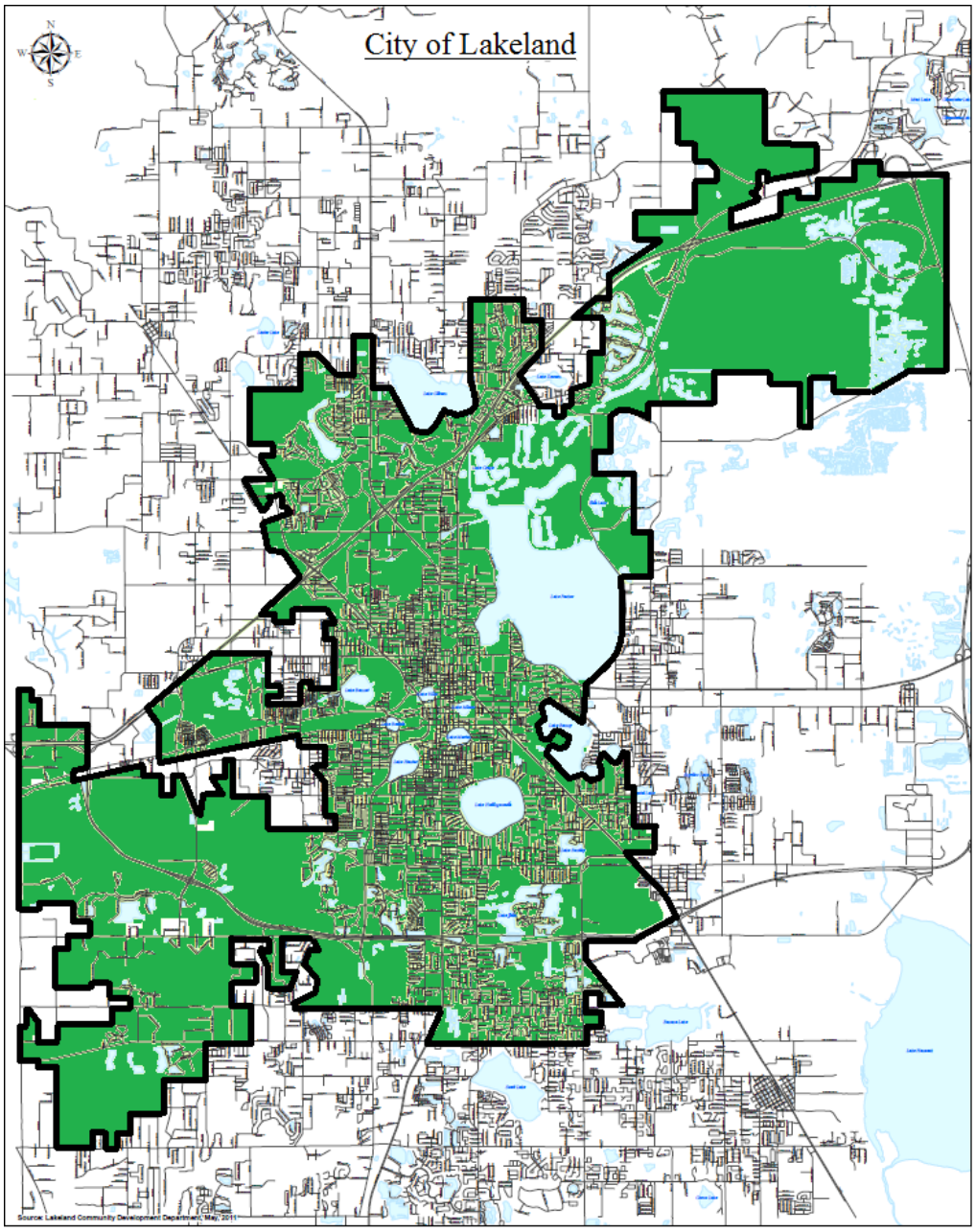
## STATEMENT OF THE CASE AND FACTS

This case involves an original action mandated by the Florida Constitution to determine the validity of Senate Joint Resolution 1176 ("SJR 1176"), which apportions the Florida House of Representatives and Senate based upon the population figures established by the 2010 census. The Florida Legislature passed SJR 1176 on February 9, 2012.

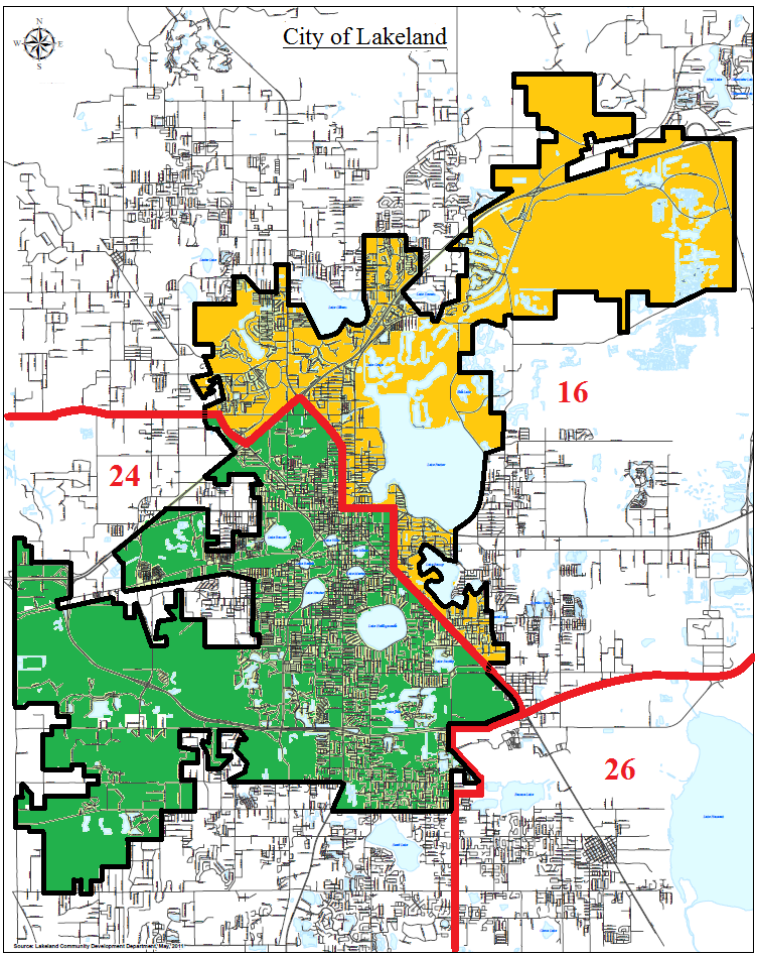
In accordance with Article III, Section 16(c) of the Florida Constitution, the Florida Attorney General filed a Petition for Declaratory Judgment regarding the validity of SJR 1176 on February 10, 2012. Pursuant to Article III, Section 16(c), this Court has thirty (30) days from February 10, 2012, to enter its judgment regarding the validity of SJR 1176.

The City of Lakeland objects to the manner in which the Florida Legislature has drawn and adopted the state Senate districts. The City contends the Florida Legislature has violated the plain and unambiguous language of Article III, Section 21(b) of the Florida Constitution, which requires the utilization of existing political boundaries to establish the new state Senate districts. The City also contends the Florida Legislature has violated the plain and unambiguous language contained in Article III, Section 21(a) of the Florida Constitution, which prohibits the drawing of state Senate districts with the intent to favor or disfavor a political party or an incumbent.

The City of Lakeland was incorporated on January 1, 1885, and is located in Polk County, along the I-4 Corridor. As of the 2010 census, the City's population is 97,422. The city limits of Lakeland currently cover approximately 74.62 square miles. The City's existing municipal boundaries are depicted on the following map:



The Florida Legislature's plan for apportioning the state Senate districts ("State Senate Plan") fails to utilize the existing municipal boundaries of the City of Lakeland. Rather, the State Senate Plan splits the City into two (2) pieces. The western piece consists of approximately 40.9 square miles, contains 63,292 citizens of Lakeland, and is included in new state Senate District 24 ("Senate District 24"). The eastern piece consists of approximately 33.8 square miles, contains 34,130 citizens of Lakeland, and is included in new state Senate District 16 ("Senate District 16"). The following diagram depicts the City's municipal boundaries with Senate District 24 and Senate District 16:



Senate District 24 includes portions of western Polk and eastern Hillsborough counties, along with a substantial majority of Manatee County. Senate District 24 includes portions of western Polk and eastern Hillsborough counties, along with a substantial majority of Manatee County. Beginning in the northwest corner of the district in eastern Hillsborough County, the district includes ***all*** of the municipal boundaries of Plant City. Heading approximately ten (10) miles east from Plant City into western Polk County, ***the northeastern corner of the district boundaries cuts directly through the center of the City of Lakeland, taking the more populated southwestern portion of the City, while leaving the northeastern half behind***. Heading south from Plant City and Lakeland, the district captures an approximately fifteen (15) to twenty (20) mile wide swath of mostly rural land in eastern Hillsborough and western Polk counties, widening on the Hillsborough side just before the Manatee County border. Upon reaching the southern borders of Polk and Hillsborough counties, the district expands to include virtually all of Manatee County. The district boundaries follow the entire eastern, western, and southern borders of Manatee County, with only a small portion in the northwest of the county omitted from this district. Along the Manatee County coast, the district captures the entire city limits of several beachfront cities, including Anna Maria, Holmes Beach, and Bradenton Beach, and the vast majority of Bradenton and Palmetto. Overall, Senate District 24 is

approximately forty-five (45) miles wide at its widest point (the entirety of Manatee County), with a maximum height of approximately fifty-five (55) miles (from Lakeland to the southern border of Manatee County).

Senate District 16 is comprised of portions of the northern half of Polk County, a majority of Osceola County, and part of southeast Orange County. Beginning in the southwest corner, ***the district takes the northeastern half of the City of Lakeland that was left behind by Senate District 24***. From there, the district stretches east-southeast through mostly rural land, capturing the majority of northern Polk County (other than a swath of land claimed by Senate District 14) before reaching the Osceola County border. The district then spreads out to include the vast majority of Osceola County, excluding only a small part of the northwestern portion of the county which is part of Senate District 14. Beyond the northern boundary of Osceola County, the district reaches approximately five (5) to ten (10) miles into the southeastern portion of Orange County. Overall, Senate District 16 is approximately seventy-five (75) miles wide at its widest point (from the western border of Polk County near Lakeland to the eastern border of Osceola County), with a maximum height of approximately sixty (60) miles (from the southern border of Osceola County to the district's northern border in Orange County).

## SUMMARY OF THE ARGUMENT

The Florida Legislature has ignored the City of Lakeland's municipal boundaries and bifurcated the City into two (2) state Senate districts. Such bifurcation violates the plain and unambiguous language contained in Article III, Section 21(b) of the Florida Constitution which mandates, in pertinent part, that all districts, including state Senate districts, shall "utilize existing political . . . boundaries," unless it is not feasible to do so. The record of the Legislative proceedings is devoid of any factual predicate upon which the Florida Legislature could have relied when it determined that it was not feasible to utilize the City's existing municipal boundaries. To the contrary, the record supports a conclusion that the Legislature could have respected the municipal boundaries of the City of Lakeland but chose not to.

The Florida Legislature has also violated the plain and unambiguous language contained in Article III, Section 21(a) of the Florida Constitution which prohibits the drawing of state Senate districts with the intent to favor or disfavor a political party or an incumbent. The Senate District Maps unconstitutionally protect incumbents and Republicans, and disfavor Democratic members and voters.

Consequently, the Court is required to invalidate the State Senate Plan. Accordingly, this Court must deny the Petition for Declaratory Judgment filed by the Florida Attorney General and invalidate SJR 1176.

## ARGUMENT

The Florida Legislature has ignored the City of Lakeland's municipal boundaries and bifurcated the City into two (2) state Senate districts. As a result of such bifurcation, the Florida Legislature has violated the following requirements of Article III, Section 21 of the Florida Constitution:

A. Section 21(b)'s requirement that the drawing of state Senate districts shall utilize political boundaries, unless it is not feasible to do so; and

B. Section 21(a)'s prohibition against the drawing of state Senate districts with the intent to favor or disfavor a political party or an incumbent.

As a result of these violations of the express requirements of the Florida Constitution, the Court is required to invalidate the State Senate Plan. Accordingly, this Court must deny the Petition for Declaratory Judgment filed by the Florida Attorney General and invalidate SJR 1176.

**Standard of Review**

The interpretation of the Florida Constitution is "a question of law," considered *de novo*. *See Pleus v. Crist*, 14 So. 3d 941, 944 (Fla. 2009). In interpreting the Florida Constitution, this Court "follows principles parallel to those of statutory interpretation." *See Zingale v. Powell*, 885 So. 2d 277, 282 (Fla. 2004). First and foremost, this Court must examine the actual language used in the Constitution. *See id.*; *see also Pleus*, 14 So. 3d at 944. "If that language is clear, unambiguous, and addresses the matter in issue, then it must be enforced as written." *Fla. Soc'y of Ophthalmology v. Fla. Optometric Ass'n*, 489 So. 2d 1118, 1119 (Fla. 1986).

Additionally, this Court "endeavors to construe a constitutional provision consistent with the intent of the framers and the voters." *Zingale*, 885 So. 2d at 282 (quoting *Caribbean Conservation Corp. v. Fla. Fish & Wildlife Conservation Comm'n*, 838 So. 2d 492, 501 (Fla. 2003)). As this Court has previously explained:

> The fundamental object to be sought in construing a constitutional provision is to ***ascertain the intent of the framers*** and the provision must be construed or interpreted in such manner as to ***fulfill the intent of the people***, never to defeat it. Such a provision must never be construed in such manner as to make it possible for the will of the people to be frustrated or denied.

*Id*. (quoting *Caribbean Conservation Corp.*, 838 So. 2d at 501); *see also Gray v. Bryant*, 125 So. 2d 846, 852 (Fla. 1960). In construing a constitutional provision, this Court is also not at liberty to add words that were not placed there originally or to ignore words that were expressly placed there at the time of adoption of the provision. *See Pleus*, 14 So. 3d at 945.

### A. The Senate District Maps Violate The New Requirement Of Article III, Section 21(b) Of The Florida Constitution To Utilize Existing Political Boundaries For The Redistricting Of State Senate Districts

Article III, Section 21 of the Florida Constitution provides:

> 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 (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 (a) and (b) of this section are set forth shall not be read to establish any priority of one standard over the other within that subsection.

(Emphasis supplied) (footnotes omitted).

Article III, Section 21 was added to the Florida Constitution in November 2010. Thus, the utilization of existing political boundaries for the redistricting of state Senate districts is a new state constitutional requirement that this Court has not previously considered during its mandatory thirty (30) day review of a joint resolution of apportionment.

The plain and unambiguous language of Article III, Section 21(b) mandates that all districts, including state Senate districts, ***shall*** "utilize existing political . . . boundaries," unless it is not feasible to do so. It cannot be reasonably disputed that a political boundary includes a municipal boundary, such as the municipal boundaries of the City of Lakeland. Indeed, the ballot summary of the constitutional amendment containing Article III, Section 21(b) expressly referred to "existing city . . . boundaries." *See Advisory Op. to Att'y Gen. re Standards for Establishing Legislative Dist. Boundaries*, 2 So. 3d 175, 179 (Fla. 2009).

The problems associated with failing to respect political boundaries were described nearly forty (40) years ago by Judge Spector in his dissent to the Court's opinion validating the 1972 joint resolution of apportionment:

> Respecting the integrity of existing boundaries of political subdivisions of the state has long been recognized as a valid state policy which justifies minor deviations from ideal population figures. Maintaining a citizen's membership in a homogeneous governmental unit is a valid state goal. A citizen's concern with local

units of governments and governmental affairs cannot be dismissed in a willy-nilly fashion. To separate a small segment of a county's population where population ratios do not require obviously has some purpose other than compliance with the "one man, one vote" principle.

There are at least three reasons why state legislatures should be permitted and even encouraged to base legislative districts on county and municipal boundaries.

The first is that the residents of counties and cities have certain common interests and needs, and their local governments must often seek the assistance of their state legislators in sponsoring and supporting legislation to deal with specific local problems. . . . In addition, the legislature is increasingly called upon to regulate the relationships among local governments. It is important for legislators to represent the voters living in specific cities, counties and districts, and not just those residing in particular census tracts.

* * * *

Political boundaries represent lines of communications, and lines of responsibility and authority. When those lines are not recognized in the makeup of the legislature, it will become the natural order of things that the legislature and the system of positive law will be bypassed in, or will itself bypass, the governmental process.

A second reason for maintaining political boundaries in apportionment is less often recognized. One reason that state legislatures appear to be ineffective and unresponsive is that citizens seem to know little about their activities and often do not know what their own legislators are doing, or even who they are. Sometimes the lack of acquaintance runs in the other direction as well. ***If legislators are elected from districts***

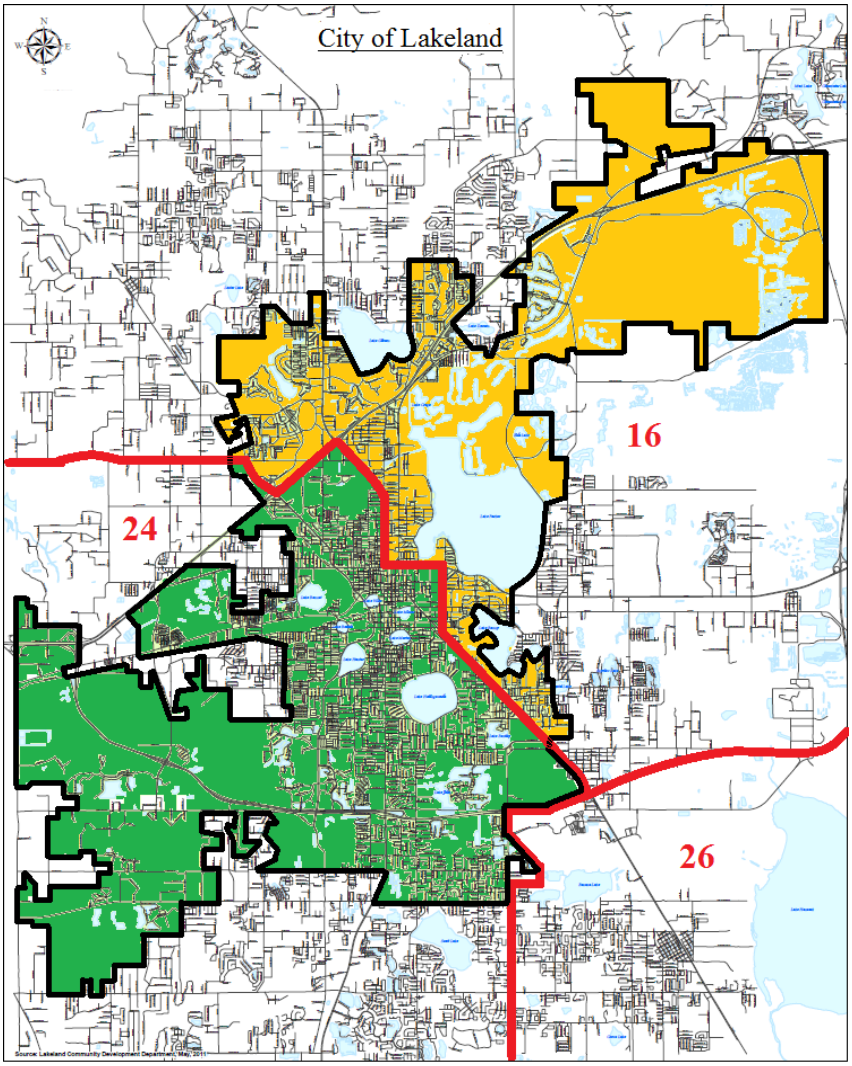
> ***that are unrelated to familiar city and county boundaries, they are likely to be even less visible to the voters. The visibility of legislators is not a trivial problem, but is central to the functioning of a representative system***.
>
> A third reason for maintaining political boundaries was also recognized by Justice Warren in *Reynolds v. Sims*: "Indiscriminate districting, without any regard for political subdivision or natural or historical boundary lines, may be little more than an open invitation to partisan gerrymandering." Justice White agreed in his dissent in *Kirkpatrick v. Preisler*, 394 U.S. 526, 89 S.Ct. 1225, 22 L.Ed.2d 519 (1969): "***If county and municipal boundaries are to be ignored, a computer can produce countless plans for absolute population equality, one differing very little from another, but each having its own very different political ramifications***. . . ."

*In re Apportionment Law, Senate Joint Resolution No. 1305, 1972 Regular Session*, 263 So. 2d 797, 818-820 (Fla. 1972) (Spector, J., dissenting) (emphasis supplied).

Although Judge Spector's arguments regarding the necessity to utilize political boundaries pertained to the constitutionality of multi-member districts and were not adopted by the majority of the Court, his analysis is directly applicable to how this Court should apply the ***new*** state constitutional requirement mandated by Article III, Section 21(b) of the Florida Constitution – that all districts, including state Senate districts, shall "utilize existing political . . . boundaries," unless it is not feasible to do so.

## 1. It Was Feasible To Utilize The Municipal Boundaries Of The City Of Lakeland

The State Senate Plan fails to utilize the existing municipal boundaries of the City of Lakeland. Rather, the State Senate Plan splits the City into two (2) pieces. The western piece consists of approximately 40.9 square miles, contains 63,292 citizens of Lakeland, and is included in new Senate District 24. The eastern piece consists of approximately 33.8 square miles, contains 34,130 citizens of Lakeland, and is included in new Senate District 16.



The City of Lakeland has been unable to find any evidence in the record of the Legislative proceedings which establishes that it was not feasible for the Florida Legislature to respect the municipal boundaries of the City of Lakeland. Rather, the bifurcation of the City was the result of the mapping approach that the Florida Legislature opted to utilize:

> SENATOR GAETZ: Thank you very much, Senator Dockery. You accurately reflected the difficulty of redistricting when one starts in the northwest or if one starts in the southeast or if one starts at either coast, you wind up in Polk County and it is the place of convergence.
>
> * * * *
>
> These various factors combined to result in a district boundary in the Lakeland area, and I would only say that we could have started in Polk County and gone out.
>
> And I think you make an excellent argument, Senator Dockery, that we could have done that, but at this point any change to this part of the region would have ripple affects throughout the entire area and in the bordering districts, and we believe that this arrangement that is in the proposal represented the best reconciliation of priorities.
>
> * * * *
>
> SENATOR DOCKERY: . . . [W]hat concerns me the most is Lakeland, our population center, is split into two districts that have a minority percentage of representation of their voters in Polk County.

> So those two districts that would have parts of Lakeland are being called rural communities. However, if Lakeland had been kept whole as I think Fair District Amendments would have directed it to be, . . . that would not have been a rural community, that would have been our main population center.

(Record at 6630-33).[1]

Thus, Senator Gaetz admitted that the Florida Legislature could have started the mapping process in a manner which would have resulted in Polk County and the City of Lakeland not becoming the point of convergence and, thus, avoided the bifurcation of the City of Lakeland. Such admission demonstrates that protecting the municipal boundaries of the City of Lakeland was feasible – the Florida Legislature simply chose not to spend the additional time and effort to evaluate different mapping approaches.

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[1] On February 3, 2012, Representative Jenne also attempted to address the improper bifurcation of the City of Lakeland:

> My amendment will also reunite the City of Lakeland into one Senate district. As you all know Lakeland is a city just under 100,000 residents and it was split into three [sic] districts on the Senate map, which deluded [sic] effective representation of Lakeland and Polk County. Lakeland is the largest city in the I-4 Corridor, in-between Tampa and Orlando, but was placed in a district designed to unite agricultural communities of interest.

(Record at 5310).

Moreover, there is nothing about the City of Lakeland and the unincorporated areas that surround the City which preclude the City from being placed in a single district. Indeed, the City of Lakeland is unlike many of the municipalities in the southeastern portion of Florida, which frequently abut one another and, therefore, make it much more difficult to draw district lines that utilize municipal boundaries. Rather, the City of Lakeland is similar to other cities in central and northern Florida that are surrounded by large swaths of unincorporated areas such as Tallahassee, Gainesville, Ocala, and Deltona. Accordingly, there is no legitimate reason that the municipal boundaries of the City of Lakeland could not have been respected, just as those of Tallahassee, Gainesville, Ocala, and Deltona have been respected.

Thus, it was feasible for the Florida Legislature to respect the municipal boundaries of the City of Lakeland and include all of its citizens in a single state Senate district. Although including the City in one state Senate district would have required the revision of other state Senate districts' boundaries, such a revision does not equate to infeasibility. To the contrary, such a revision was the constitutional duty of the Florida Legislature, which it failed to perform.

Lastly, the City anticipates that the Florida Legislature will argue that this Court is required, pursuant to the separation of powers doctrine, to defer to the Florida Legislature's determination of feasibility. The Court should reject such

deference – to do so would render the constitutional requirement mandated by Article III, Section 21(b) of the Florida Constitution – that all districts, including state Senate districts, shall "utilize existing political . . . boundaries," unless it is not feasible to do so – a nullity. The Legislative record must demonstrate that it was not feasible to respect the municipal boundaries of the City of Lakeland. As stated above, the Legislative record establishes to the contrary – protecting the municipal boundaries of the City of Lakeland was feasible; the Florida Legislature simply chose not to do so.

**2. The Citizens Of The City Of Lakeland Have Been Deprived Of Effective And Meaningful Representation As A Result Of The Bifurcation Of Their City**

Effective and meaningful representation of the citizens of the City of Lakeland has also been undermined by the splitting of the City of Lakeland into two (2) pieces. Less than two-thirds of the citizens of Lakeland – 63,292 citizens – have been included in Senate District 24, which includes portions of western Polk and eastern Hillsborough counties, along with a substantial majority of Manatee County. The remaining 34,130 citizens of Lakeland have been included in Senate District 16, which is comprised of portions of the northern half of Polk County, a majority of Osceola County, and part of southwest Orange County.

Rather than voting as a block of approximately 100,000 citizens in a single district totaling approximately 470,000 people, the political influence of the residents of the City of Lakeland has been greatly diminished. The citizens of Lakeland represent 13.5% of the 467,825 people residing in Senate District 24, and 7.3% of the 467,909 people residing in Senate District 16.

Moreover, the overwhelming majority of the population included in Senate District 24 is located in the coastal area of Manatee County, which contains the entire city limits of several beachfront cities, including Anna Maria, Holmes Beach, and Bradenton Beach, and the vast majority of Bradenton and Palmetto. These coastal communities are completely unlike the rural portion of Polk County in which the City of Lakeland is located.[2] Common sense dictates that issues which concern the citizens of Lakeland in Senate District 24 will not be the same issues which concern the majority of the population located in the coastal area of Manatee County – issues such as protection of Green Swamp recharge areas versus saltwater intrusion and water shortages, rural interior lifestyle versus beach lifestyle, and transportation issues on the I-4 Corridor versus hurricane evacuation. The bifurcation of the City of Lakeland, coupled with its citizens being included

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[2] The distinction between coastal interests and rural interests formed the basis for several state Senate district lines; yet was ignored in Senate District 24 to the detriment of the City of Lakeland. (*See* Record at 5599, lines 15-20; 6523, lines 1-7; 6568, lines 13-15; 6575, lines 12-14; 6580, lines 17-21; 6581, lines 9-14; 6598, lines 12-14; 6737, lines 17-19; and 6739, lines 16-22).

with a majority population of coastal residents, virtually ensures that the City's political voice will be unheard.

In conclusion, the Florida Legislature has violated the plain and unambiguous language of Article III, Section 21(b) of the Florida Constitution which requires the utilization of existing political boundaries to establish the new state Senate districts. Consequently, the Court is required to invalidate the State Senate Plan, deny the Petition for Declaratory Judgment filed by the Florida Attorney General, and invalidate SJR 1176.

**B. The Senate District Maps Violate The New Requirement Of Article III, Section 21(a) Of The Florida Constitution Which Prohibits The Drawing Of Senate Districts With The Intent To Favor Or Disfavor A Political Party Or An Incumbent**

Article III, Section 21(a) of the Florida Constitution provides:

> 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.

(Emphasis supplied).

Article III, Section 21(a) was added to the Florida Constitution in November 2010. Thus, the prohibition against drawing Senate districts with the intent to favor or disfavor a political party or an incumbent is a new state constitutional requirement that this Court has not previously considered during its mandatory thirty (30) day review of a joint resolution of apportionment.[3]

The Florida Legislature's violation of the new state constitutional prohibition against drawing Senate districts with the intent to favor or disfavor a political party or an incumbent is demonstrated by the analysis by the League of Women Voters of Florida, the National Council of La Raza, and Florida Common Cause which was entered into the Legislative record and presented to Representative Will Weatherford, Chairman of the House Redistricting Committee:

> The Senate's proposed State Senate Map is an example of precisely the sort of incumbent favoritism that Floridians intended to prevent when they passed the FairDistricts Amendments. Virtually no incumbent senator is likely to lose a seat, as the Senate Proposed Map keeps performance numbers in all districts at approximately the same levels as the existing plan. Indeed practically every single incumbent member of the Senate who is not term limited will hold a seat that is no less advantageous than his or her old seat, and the

[3] The Court has previously concluded that "the protection of incumbents, standing alone, is not illegal." *In re Constitutionality of Senate Joint Resolution 2G*, 597 So. 2d 276, 285 (Fla. 1992). The 2010 Amendments to the Florida Constitution alter that conclusion – protection of incumbents is no longer constitutional.

majority of incumbents will hold safe Democratic or Republican seats.

As further evidence of clear incumbent favoritism, on average, the Senate's new State Senate districts retain nearly two-thirds of their current populations. But districts where no incumbent can run due to term limits retain only slightly more than half of their original populations. In effect, where no incumbent had an interest in a district, those districts were substantially reworked; in districts where incumbents had an interest in retaining their same constituencies, the constituencies overwhelmingly stayed within the incumbents' districts.

Moreover, an amendment offered to the Senate Reapportionment Committee on December 30, 2011 strategically provided new numbering for the State Senate districts of certain incumbents. Due to the renumbering, the Senate's plan provides incumbents new terms of either 8 or 10 years. In renumbering the districts, the Senate plainly had to consider where incumbents lived. This policy on its face was designed to advantage incumbents by granting select incumbents terms of 10 years rather than 8.

Looking deeper into particular districts, it becomes evident that certain districts in the map were clearly designed to keep incumbents in office. Proposed Senate Districts 1 and 3 in the panhandles are drawn horizontally in order to avoid incoming Senate President Gaetz and Senator Evers being pitted against each other. In order to do this, each of the districts splits five counties. The Senate's concern with incumbent protection eclipsed its constitutional obligation to respect political boundaries where feasible.

Additionally, in its relentless pursuit to protect incumbents, the Senate's map compromises other redistricting principles such as compactness. The best example of this is the Senate's proposed Senate District

10, which is gerrymandered into a bizarre shape for Senate Majority Leader Gardiner. His old district had been trending more Democratic, and his new district is safely Republican. It takes up parts of Lake and western Orange Counties but has a hand that winds down around Orlando, extending up into Winter Park, catching the Majority Leader's residence on its way. In order to include the northeastern part of Orange it narrows at one point so that its boundaries almost touch each other. In doing this, the Senate was able to give Gardiner a new, safer seat that is solidly Republican. His old seat had been leaning more Democratic in recent elections. The Senate's new District 10 also barely misses incumbent Republican David Simmon's new District 13, preventing two incumbent Republicans from being pitted against one another and preserving safe Republican seats for each of them. District 13 reaches down from Alamonte Springs to scoop up Simmons's residence in Maitland, keeping this area out of Majority Leader Gardiner's District 10.

The redistricting process was also used to bolster previously vulnerable incumbent candidates. For example, Republican Joe Negron previously represented District 28, a district that only leaned Republican. Under the Senate's new map, Negron will run in District 25, a safe Republican seat. Jack Latvala, a Republican senator rumored to be eyeing the Senate Presidency, is likewise placed in a district with stronger Republican performance. Similarly, the Senate's new District 15 is gerrymandered to favor incumbent Republican Jim Norman. The district encompasses parts of Pasco and Hillsborough. Although he lives in Tampa, in 2010 Norman enjoyed strong support in Pasco and did not do as well in Hillsborough. Additionally, Hillsborough voters would likely remember the recent federal criminal investigation of Norman for financial dealings while he was on the Hillsborough County Commission. The proposed District gives Norman much more of Pasco and sheds the Temple Terrace and New Tampa areas, where he lost in 2010. To keep Democrats Eleanor Sobel and

> Gwen Margolis safe, the Senate map removes African-American and Hispanic voters from their districts and places them into surrounding districts. This effectively bleaches Sobel's and Margolis' districts, allowing these incumbents to retain many of the constituencies they now serve - and insulating them from the minority voters with which they are unfamiliar.

(Revised Redistricting Committee Action Packet at 1452-62).[4]

The State Senate Plan's protection of incumbents and Republicans could not have occurred by accident. Consequently, the fact that such protection has occurred demonstrates the intent to do so. *See Davis v. Bandemer*, 478 U.S. 109, 129 (1986) ("As long as redistricting is done by a legislature, it should not be very difficult to prove that the likely political consequences of the reapportionment were intended." (footnote omitted)). After all, legislative bodies are, by definition, political in nature. However, with the emphatic statement made by the electorate with the adoption of Amendment 5 – which resulted in Section 21(a) of the Florida Constitution, the standards have changed. When analyzed in the more deliberative forum of judicial review, such a politically-motivated result cannot stand.

In conclusion, the Florida Legislature has violated the plain and unambiguous language contained in Article III, Section 21(a) of the Florida Constitution which prohibits the drawing of state Senate districts with the intent to

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[4] Available at http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2595&Session=2012&DocumentType=Action%20Packets&FileName=Redist_REVISED_ACTN_1-27-12.pdf (last visited on February 17, 2012).

favor or disfavor a political party or an incumbent. Consequently, the Court is required to invalidate the State Senate Plan, deny the Petition for Declaratory Judgment filed by the Florida Attorney General, and invalidate SJR 1176.

## CONCLUSION

In sum, for the reasons set for above, the State Senate Plan fails to comply with the newly adopted requirements of Article III, Sections 21(a) and (b) of the Florida Constitution. The Florida Legislature has violated the plain and unambiguous language of Article III, Section 21(b) of the Florida Constitution which requires the utilization of existing political boundaries to establish the new state Senate districts. The Florida Legislature has also violated the plain and unambiguous language contained in Article III, Section 21(a) of the Florida Constitution which prohibits the drawing of state Senate districts with the intent to favor or disfavor a political party or an incumbent. Accordingly, this Court must

deny the Petition for Declaratory Judgment filed by the Florida Attorney General and invalidate SJR 1176.

RESPECTFULLY SUBMITTED this 17th day of February 2012.

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## CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Brief complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a).

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