

IN THE SUPREME COURT OF FLORIDA

Case No. SC08-986, SC08-1149

**ADVISORY OPINION TO THE
ATTORNEY GENERAL RE:
STANDARDS FOR
ESTABLISHING LEGISLATIVE
DISTRICT BOUNDARIES**

**ADVISORY OPINION TO THE
ATTORNEY GENERAL RE:
STANDARDS FOR
ESTABLISHING
CONGRESSIONAL
BOUNDARIES**

NOTICE OF SUPPLEMENTAL AUTHORITY

The opponents to the amendments provide the following supplemental authority, pursuant to Fla.R.App.P. 9.225. Chisom v. Roemer, 501 U.S. 380 (1991), is relevant to the discussion of the use of “and” in the ballot summaries rather than the “or,” which appears in the text. The amendments’ text reads in part, “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 representative of their choice.” This language is virtually identical to that in the federal Voting Rights Act, 42 U.S.C. s. 1973(b). On the significance of and/or distinction in the act, the Supreme Court said:

Any abridgment of the opportunity of members of a protected class to participate in the political process inevitably impairs their ability to influence

the outcome of an election. As the statute is written, however, the inability to elect representatives of their choice is not sufficient to establish a violation unless, under the totality of the circumstances, it can also be said that the members of the protected class have less opportunity to participate in the political process. The statute does not create two separate and distinct rights. Subsection (a) covers every application of a qualification, standard, practice, or procedure that results in a denial or abridgment of “ the right ” to vote. The singular form is also used in subsection (b) when referring to an injury to members of the protected class who have less “opportunity” than others “to participate in the political process and to elect representatives of their choice.” 42 U.S.C. § 1973 (emphasis added). It would distort the plain meaning of the sentence to substitute the word “or” for the word “and.” Such radical surgery would be required to separate the opportunity to participate from the opportunity to elect.

Chisom v. Roemer, at 397.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served by U.S. mail, on Attorney General Bill McCollum and Scott Makar, Solicitor General, PL-01, The Capitol, Tallahassee, FL 32399; and Barry Richard and Hope Keating, 101 East College Ave., Tallahassee, FL 32301; Mark Herron, 2618 Centennial Place, Tallahassee, FL 32308; and John Mills and Timothy McLendon, PO Box 2099, Gainesville, FL 32602-2099 on Oct. 21, 2008.

Jason Vail