

The Honorable Peggy A. Quince
Chief Justice, and Justices of
The Supreme Court of Florida
The Supreme Court Building
Tallahassee, Florida 32399-1925

RE: Standards for Legislature to Follow in Legislative Redistricting

Dear Chief Justice Quince and Justices:

On May 29, 2008, in accordance with the provisions of Article IV, section 10, Florida Constitution, and section 16.061, Florida Statutes, I petitioned this Honorable Court for an advisory opinion on the initiative petition seeking to amend the Florida Constitution to establish standards for the Legislature to follow in legislative redistricting. On June 20, 2008, this office respectfully requested this Honorable Court's opinion as to whether the financial impact statement prepared by the Financial Impact Estimating Conference is in accordance with section 100.371, Florida Statutes.

On January 29, 2009, this Honorable Court rejected the financial impact statement for the proposed amendment stating that it did not comply with section 100.371, Florida Statutes. In re Advisory Opinion to the Attorney General – Standards for Establishing Legislative District Boundaries, Case No. SC08-986 (Fla. January 29, 2009).

On February 13, 2009, the Financial Impact Estimating Conference, in accordance with the provisions of section 100.371(6)(a), Florida Statutes, forwarded to this office a revised financial impact statement on the initiative petition. I respectfully request this Honorable Court's opinion as to whether the revised financial impact statement prepared by the Financial Impact Estimating Conference on the constitutional amendment, proposed by initiative petition entitled "*Standards for Legislature to Follow*

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in Legislative Redistricting" (a copy of which is attached) is in accordance with section 100.371, Florida Statutes.

Sincerely,

Bill McCollum
Attorney General

cc: Mr. Kurt S. Browning
Secretary of State

The Honorable Charlie Crist
Governor, State of Florida

The Honorable Jeff Atwater
President, Florida Senate

The Honorable Larry Cretul
Speaker pro tempore, Florida House of Representatives

Mr. Thom Rumberger
Chair, FairDistrictsFlorida.org
704 West Madison Street
Tallahassee, Florida 32304-4324

Mr. Mark Herron
704 West Madison Street
Tallahassee, Florida 32304-4324

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished by U.S. Mail delivery this _____ day of February, 2009, to the following:

Mr. Thom Rumberger
Chair, FairDistrictsFlorida.org
704 West Madison Street
Tallahassee, Florida 32304-4324

Mr. Mark Herron
704 West Madison Street
Tallahassee, Florida 32304-4324

I hereby certify that a true and correct copy of the foregoing has been furnished via interoffice mail delivery this _____ day of February, 2009, to the following:

Mr. Kurt Browning
Secretary of State
attn: General Counsel

The Honorable Charlie Crist
Governor, State of Florida
attn: General Counsel

The Honorable Jeff Atwater
President, Florida Senate
attn: General Counsel

The Honorable Larry Cretul
Speaker pro tempore, Florida House of Representatives
attn: General Counsel

Director, Division of Elections

Joslyn Wilson
Assistant Attorney General
Fla. Bar. No. 0233781

FINANCIAL IMPACT ESTIMATING CONFERENCE

FINANCIAL IMPACT STATEMENT

STANDARDS FOR THE LEGISLATURE TO FOLLOW IN LEGISLATIVE
REDISTRICTING, #07-16

The fiscal impact cannot be determined precisely. State government and state courts may incur additional costs if litigation increases beyond the number or complexity of cases which would have occurred in the amendment's absence.

**INITIATIVE FINANCIAL INFORMATION STATEMENT
STANDARDS FOR LEGISLATURE TO FOLLOW IN LEGISLATIVE REDISTRICTING**

SUMMARY OF INITIATIVE FINANCIAL INFORMATION STATEMENT

Article III, Section 16 of the Florida Constitution provides for legislative redistricting of the state into legislative districts in the second year following each decennial census. The proposed constitutional amendment adds Section 21 to Article III of the Florida Constitution setting standards for establishing legislative districts or districting plans: legislative districts or districting plans may not be drawn with the intent to favor or disfavor an incumbent or political party; districts shall not be drawn with the intent or result of denying racial or language minorities the equal opportunity to participate in the political process or to diminish their ability to elect representatives of their choice; districts must be contiguous; and, unless otherwise required, districts must be as equal in population as practicable, must be compact, and must make use of existing political and geographical boundaries.

Given information provided through public workshops and collected through staff research, the Financial Impact Estimating Conference expects that the proposed amendment may result in increased costs based on the following:

- The State may incur additional legal costs to litigate the redistricting plans developed under the proposed constitutional standards. Since the amendment increases the number of factors that could be litigated, the districting initiative may expand the scope and complexity of litigation to determine the validity of each new apportionment plan. For example, the requirement that every district be drawn so as not to favor or disfavor any incumbent or political party may spawn challenges. Such costs are more likely during the first reapportionment after the amendment's passage as judicial clarification of the new standards is sought and the related legal doctrine developed. These legal costs are indeterminate.
- The Department of Legal Affairs concurs that there may be increased litigation costs, and that they may experience increased costs if they are asked to litigate these actions.
- The Office of the State Courts Administrator believes there will be an impact at the trial court and appellate level. They assume that litigation will increase. The amount of increased litigation is unknown and the estimated impact on the trial court, the judicial workload, and the appellate workload is indeterminate.
- The amendment does not substantially alter the current responsibilities or costs of the Department of State, the supervisors of elections, or local governments.
- Any additional cost to the Legislature to develop the plans is indeterminate.
- The amendment does not directly impact government revenues.

FINANCIAL IMPACT STATEMENT

The fiscal impact cannot be determined precisely. State government and state courts may incur additional costs if litigation increases beyond the number or complexity of cases which would have occurred in the amendment's absence.

I. SUBSTANTIVE ANALYSIS

A. Proposed Amendment

Ballot Title:

STANDARDS FOR LEGISLATURE TO FOLLOW IN LEGISLATIVE REDISTRICTING

Ballot Summary:

Legislative districts or districting plans may not be drawn to favor or disfavor an incumbent or political party. Districts shall not be drawn to deny racial or language minorities the equal opportunity to participate in the political process and elect representatives of their choice. Districts must be contiguous. Unless otherwise required, districts must be compact, as equal in population as feasible, and where feasible must make use of existing city, county and geographical boundaries.

1) Statement and Purpose:

The purpose of this amendment is to set standards for the Legislature to follow when establishing legislative district boundaries.

2) Amendment of Florida Constitution:

The amendment proposes to add Section 21 to Article III as follows:

Section 21. Standards for Establishing Legislative District Boundaries. --.

In establishing Legislative district boundaries:

(1) No apportionment plan or individual 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.

(2) Unless compliance with the standards in this subsection conflicts with the standards in subsection (1) 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.

(3) The order in which the standards within sub-sections (1) and (2) of this section are set forth shall not be read to establish any priority of one standard over the other within that subsection.

3) Effective Date and Severability:

Pursuant to Article XI, Section 5, this amendment will be effective on January 4, 2011.

B. Effect of Proposed Amendment

Background

Sponsor of the proposed amendment

The FairDistrictsFlorida.org is the official sponsor of this proposed constitutional amendment. FairDistrictsFlorida.org is a registered political committee “working to reform the way the state draws Legislative and Congressional district lines by establishing constitutionally mandated fairness standards.”¹

The sponsor proposes that the amendment will establish fairness standards for use in creating legislative district boundaries; protecting minority voting rights; prohibiting district lines that favor or disfavor any incumbent or political party; requiring that districts are compact; and requiring that existing political and geographical boundaries be used.²

Apportionment and Redistricting In Florida

Article III, Section 16 of the Florida Constitution provides for legislative apportionment and redistricting of the state.

In its regular session in the second year after the decennial census, the legislature must redistrict the into not less than thirty nor more that forty consecutively numbered senatorial districts and not less than eighty nor more than one hundred twenty consecutively numbered representative districts. Districts must be contiguous, overlapping or identical territory. The legislature must follow the state constitution, the federal constitution, and federal laws.

If the session adjourns without a redistricting plan, the governor must within thirty days call a special redistricting session which shall not exceed thirty consecutive days. If the legislature adjourns and fails to redistrict the state, then the attorney general shall, within five days, petition the Supreme Court of the state to make the redistricting. No later than sixty days after the filing of the petition, the Supreme Court shall issue an order making the redistricting.

When the legislature adopts a redistricting plan, within fifteen days the attorney general shall petition the Supreme Court of the state to review the plan. The Supreme Court must issue its judgment on the plan within thirty days of the filing of the petition for review. If the Supreme Court determines the plan is valid, then the plan is binding on all citizens of the state. If the Supreme Court rules the plan invalid, then the governor shall reconvene the legislature within five days for an extraordinary redistricting session not to exceed fifteen days.

Within fifteen days after the extraordinary redistricting session, the attorney general shall petition the Supreme Court to review the plan or to inform the court that no plan was adopted. If the legislature fails to adopt a plan or if Supreme Court finds the plan invalid, the court shall, not later than sixty days after receiving the petition, make the redistricting plan for the state.

¹ <http://www.fairdistrictsflorida.org/about.asp>, “About us,” June 4, 2008.

² <http://www.fairdistrictsflorida.org/about.asp>, “Mission statement,” June 4, 2008.

Historically, the legislature has fulfilled its responsibility for redistricting with support from staff from the House, Senate and Office of Economic and Demographic Research as well as outside consultants and attorneys. During the 2002 redistricting, significant time was required by legal, professional and technical staff to perform the many tasks associated with analyzing data, working with the Census Bureau, building data sets and databases, generating reports and maps, writing briefs, developing defense arguments and providing legal advice.

Historical Costs

The total costs to the state for each of the last two redistricting cycles averaged \$13.4 million. These costs included technology and staffing costs as well as the costs of legal representation during the redistricting process and in defense of the redistricting plans.

The following chart displays state costs by entity:

10-year cycle	Period of Disbursements	Senate Costs (in millions)			House Costs (in millions)			EDR Costs (in millions)	Joint Legislative Costs (in millions)
		Operations	Legal	Total	Operations	Legal	Total	Operations	Reimburse Plaintiffs for Legal Costs
1990	1989 -- 1998	\$ 2.8	\$ 1.6	\$ 4.4	\$ 5.5	\$ 2.6	\$ 8.1	\$ 0.9	\$ 1.6
2000	1998 -- 2005	\$ 1.3	\$ 2.6	\$ 3.9	\$ 1.4	\$ 5.5	\$ 6.9	\$ 0.9	\$ -

The following chart provides a summary of the state costs:

10-year cycle	Period of Disbursements	Total State Costs (in millions)			
		Operations	Legal	Reimburse Plaintiffs for Legal Costs	Total
1990	1989 -- 1998	\$ 9.2	\$ 4.2	\$ 1.6	\$ 15.0
2000	1998 -- 2005	\$ 3.6	\$ 8.1	\$ -	\$ 11.7
Average Cost:		\$ 6.4	\$ 6.2	\$ 0.8	\$ 13.4

During previous redistricting cycles, each house of the legislature drew plans for the Florida Senate, the Florida House of Representatives, and Florida's congressional seats using computer equipment, software, staff, and other resources.

There is no available breakdown of any costs between legislative redistricting and congressional redistricting.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

Section 100.371, Florida Statutes, requires that the Financial Impact Estimating Conference (FIEC) "...complete an analysis and financial impact statement to be placed on the ballot of the estimated increase or decrease in any revenue or costs to state or local governments resulting from the proposed initiative."

As part of determining the fiscal impact of this proposed amendment, the FIEC principals held three public meetings during May and June 2008 to develop the initial impact

statement, and three additional meetings in February 2009 to address the remanded statement.

A. FISCAL ANALYSIS

The fiscal impact summary for this proposed amendment is based on independent research; testimony before the FIEC in public workshop; written statements from the proponents and opponents of the initiative; and discussions among the FIEC principals and other professional staff. Based on all of this material, the FIEC expects that the proposed amendment may result in increased costs.

This expectation is based on the following:

- **The State may incur additional legal costs to litigate the redistricting plans developed under the proposed constitutional standards.**

Since the amendment increases the number of factors that could be litigated, the districting initiative may expand the scope and complexity of litigation to determine the validity of each new apportionment plan. For example, the requirement that every district be drawn so as not to favor or disfavor any incumbent or political party may spawn challenges. At least initially, complex individual challenges to specific districts are likely. In addition, any given ruling on the interpretation and application of the standards in one case may spawn new challenges and issues in surrounding districts affected by the first ruling, leading to a ripple effect of litigation or serial claims.

Public testimony on May 23, 2008, indicated that the proposed amendment will increase litigation costs to levels at least seven to ten times those experienced in the most recent apportionments. Comments were also submitted in a written report.³ Using the historical cost average of \$6.2 million (see the Historical Costs portion of this analysis), a 7-fold increase totals \$43.4 million and a 10-fold increase totals \$62 million. Testimony by the opponents of the amendment indicated that some issues may simply expand the scope of existing litigation, rather than leading to new cases. If the increased cost of litigation only doubled the average-historical amount, the result would be multi-million dollar cost to the state. No assumption was made as to how this estimated cost would breakdown between legislative redistricting and congressional redistricting.

The Department of Legal Affairs concurs that there may be increased litigation costs, and that they may experience increased costs if they are asked to litigate these actions.

Typically, a plaintiff challenging a redistricting plan will list numerous state defendants.⁴ While the Attorney General may provide representation for the defendants, individual defendants may wish to have their own representation.

³ *Analysis of Financial Impact, Legislative and Congressional Districting Initiatives*, by George Meros, Gray Robinson, P.A., document #133905V1.

⁴ See e.g.; MIGUEL DE GRANDY, MARIO DIAZ-BALART, ANDY IRELAND, CASIMER SMERICKI, VAN B. POOLE, TERRY KETCHEL, ROBERTO CASAS, RODOLFO GARCIA, JR., LUIS ROJAS, LINCOLN DIAZ-BALART, JAVIER

All of these legal costs are indeterminate.

- **The state court system may incur costs to hear cases that allege violations of the proposed constitutional standards.**

The Office of the State Courts Administrator believes there will be an impact at the trial court and appellate level. The numbers of lawsuits filed related to the current redistricting standards following the 1990 and 2000 census were 13 and 5, respectively. They assume that the number of litigations will increase. For example, the requirement that every district be drawn so as not to favor or disfavor any incumbent or political party may spawn challenges. At least initially, complex Individual challenges to specific districts are likely. The amount of increased litigation is unknown; therefore, the estimated impact on the trial court, the judicial workload, and the appellate workload is indeterminate.

- **The amendment does not substantially alter the current responsibilities or costs of the Department of State, the supervisors of elections, or local governments.**

The FIEC found no evidence that the amendment would substantially alter the responsibilities of these entities.

- **Any additional cost to the Legislature to develop the plans is indeterminate.**
- **The amendment does not directly impact government revenues.**

SOUTO, JUSTO LUIS POSO, ALBERTO CARDENAS, REY VELAZQUEZ, LUIS MORSE, ALBERTO GUTMAN, KAREN E. BUTLER, SGT. AUGUSTA CARTER, JEAN VAN METER, ANNA M. PINELLAS, ROBERT WOODY, GINA HAHN, BILL PETERSEN, TERRY KESTER, MARGIE KINCAID, and BROOKS WHITE, Plaintiffs, v. T.K. WETHERELL, in his official capacity as Speaker of the Florida House of Representatives, GWEN MARGOLIS, in her official capacity as President of the Florida Senate, LAWTON CHILES, in his official capacity as Governor of the State of Florida, JACK GORDON, in his official capacity as Chairman of the Senate Reapportionment Committee, PETER R. WALLACE, in his official capacity as Chairman of the House Reapportionment Committee, JIM SMITH, in his official capacity as Secretary of State of Florida, ROBERT BUTTERWORTH, in his official capacity as Attorney General of Florida, Defendants. FLORIDA STATE CONFERENCE OF NAACP BRANCHES, T. H. POOLE, SR., WHITFIELD JENKINS, LEON W. RUSSELL, WILLIE DENNIS, TURNER CLAYTON, RUFUS BROOKS, VICTOR HART, KERNA ILES, ROOSEVELT WALTERS, JOHNNIE MCMILLIAN, PHYLLIS BERRY, MARY A. PEARSON, MABLE BUTLER, IRIS WILSON, JEFF WHIGHAM, AL DAVIS, PEGGY DEMON, CARLTON MOORE, RICHARD POWELL, NEIL ADAMS, LESLIE MCDERMOTT, ROBERT SAUNDERS, SR., IRV MINNEY, ADA MOORE, ANITA DAVIS, and CALVIN BARNES, Plaintiffs, v. LAWTON CHILES, in his official capacity as Governor of Florida, JIM SMITH, in his official capacity as Secretary of State of Florida, ROBERT BUTTERWORTH, in his official capacity as Attorney General of Florida, GWEN MARGOLIS, in her official capacity as President of the Florida Senate, T. K. WETHERELL, in his official capacity as Speaker of the Florida House of Representatives, JACK GORDON, in his official capacity as Chairperson of the House Reapportionment Committee, and PETER R. WALLACE, in his official capacity as Chairman of the House Reapportionment Committee, Defendants, 794 F. Supp. 1076 (N.D.Fla. 1992)

B. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS:

1. Revenues:

There will be no direct financial impact on the revenues of state or local government.

2. Expenditures:

The fiscal impact cannot be determined precisely. State government and state courts may incur additional costs if litigation increases beyond the number or complexity of cases which would have occurred in the amendment's absence.