CARLTON FIELDS

Florida Redistricting in 2012: The Political and Legal Drama

GOVERNMENT LAW & CONSULTING | JUNE 4, 2012

Kenneth A. Tinkler

As elections approach, many Floridians, including business owners who have worked with their local politicians for years, may be surprised to learn that their business or residence occupies a new congressional or state district. In some cases, the district lines have moved entire communities into districts that cover a very different geographic region. As such district lines often influence the results of elections by changing the makeup of a district's electorate, redistricting and reapportionment efforts raise partisan and legal debates that continue for years. In Florida, 2012 brought new constitutional requirements that were approved by the voters to reform the redistricting process. This article outlines the story behind this year's redistricting and explains what the results reveal about the standards for such changes in the future.

Introduction

Every 10 years, the United States conducts an "enumeration" – commonly known as the Census – pursuant to Article I, Section 2 of the U.S. Constitution . The number of members of the U.S. House of Representatives is capped at 435, and the Census numbers allow the country to divide those representatives based on population. The 2010 Census revealed that Florida would receive two additional Representatives, increasing its total to 27. In addition, the Florida Constitution requires that the State's districts for State Senate and State House members be reapportioned following the Census through a redistricting process. Strictly speaking, the term "redistricting" refers to changes in district lines, while the term "reapportionment" refers to the need to create districts that evenly distribute the population. Often these terms are used interchangeably and refer to the same constitutional process.

Changes to the Florida Constitution

In 2010, Florida's voters approved two new sections to the Florida Constitution that impose new standards for establishing both Federal Congressional and Florida legislative districts. These new sections, added as Sections 20 and 21 of Article III , provide in part:

> (a) 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.
>
> (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.

The 2012 redistricting effort was the first test of these new amendments and led to a series of court challenges.

The Process Begins: Adoption by the Florida Senate and House

Article III, Section 16 of the Florida Constitution requires that the Legislature, in its regular session in the second year following the Census, adopt between 30 and 40 senate districts and between 80 and 120 house districts. Adoption is accomplished by joint resolution. The amount of review time needed to complete the process led the Legislature to start its 2012 session two months early to ensure completion.

Action by the Attorney General, then review by the Florida Supreme Court

As also outlined in Section 16, within 15 days of the Legislature's action the Attorney General is required to petition the Florida Supreme Court for a declaratory judgment determining the validity of the reapportionment. This judgment is then binding on all citizens of the state. If the Florida Supreme Court decides that a reapportionment is not valid, the Governor is required to reconvene the Legislature to try again. A second failure gives the Florida Supreme Court the task of reapportioning the districts.

2010 Constitutional Amendments

In 2010, Florida voters passed two constitutional amendments related to the redistricting standards. The Florida Supreme Court explained that the "Fair Districts Amendments" have the following goals: "to require the Legislature to redistrict in a manner that prohibits favoritism or discrimination, while respecting geographic considerations and to require legislative districts to follow existing community lines so that districts are logically drawn, and bizarrely shaped districts . . . are avoided." The amendments passed with more than 60 percent of the vote.

The 2012 process begins

The 2012 process began with the development of a redistricting computer application, published online in 2010. Interested citizens and politicians could review the Census data when it arrived in March 2011, and develop their own district ideas. In Summer 2011, the Legislature hosted public meetings around the state soliciting public input. Not surprisingly, given that the Legislature has a single political party in the majority of both chambers, the political party in the minority questioned the motives of the majority party and whether citizen input was being factored into the reapportionment.

Legislative Committees develop maps

Beginning in April 2011, Committees in both the Florida House and Senate began work on new district boundary maps. Software available on the Legislature's website allowed anyone interested to design their own districts and review the population details for each new derivation. The meeting agendas and packets of the many committee meetings reveal that 157 proposed legislative and congressional redistricting maps were submitted by the public during Summer 2011. Only four maps were submitted by the public 10 years before.

Legislature passes new districts and lawsuits are filed

The Florida House approved new district maps on February 3, 2012 along party lines, while the Florida Senate maps gained some bipartisan support when they passed on February 9, 2012. Within days, lawsuits were filed claiming the redistricting plan was not "free of political gerrymandering and incumbent protection efforts." The suits also claimed that the new districts failed to respect the principles of compactness, and failed to follow political and geographical boundaries.

Florida Supreme Court rejects Senate map, approves the Florida House districts

As outlined above, the Florida Attorney General transmitted the newly adopted State House and Senate maps to the Florida Supreme Court. The Court heard arguments on the new district boundaries and issued an opinion on March 9, 2012 upholding the House and Congressional district lines, but finding the Senate district lines invalid.

In interpreting the new constitutional provisions, the Court held that Florida's new standards for redistricting exceeded the requirements in the U.S. Constitution and those of prior Florida Constitutions. The Court, through an opinion written by Justice Pariente, who also led the questioning during oral argument, conducted a detailed review of the districts drawn and the Court even bought computer software to help analyze the reapportionment details. The Court opined that any less detailed review would "create uncertainty for the voters of this state, the elected representative and the candidates who are required to qualify for their seats." Justice Canady, in a written dissent with which Justice Polston concurred, objected to the level of analysis and argued for a more limited and deferential review of the redistricting plans.

Highlights of the Court's 200-plus page opinion include:

- A summarized history of Florida's constitutional requirements that divides the current redistricting rules into either "Tier One" or "Tier Two."
- Tier One requirements, set forth in Article III, Section 21(a) of the Fla. Constitution, include drawing districts that do not favor or disfavor a political party of an incumbent, lack the intent or result of denying equal opportunity for a member of a

racial or language minority to participate in the political process, do not diminish the ability of such a person to elect representatives of their choice, and consist of contiguous territory.

- Tier Two requirements, set forth in Article III, Section 21(b) and which are subordinate to Tier One and to federal law, include creating districts that are as equal in population as practicable, compact in design, and use existing borders, both political and geographic.
- The Court praised the efforts of the Florida House and found that there had been no "demonstrated violation" of the Florida Constitution's requirements.
- The Court did not, however, approve of the methods of the Florida Senate and found its efforts were not compact, it failed to conduct a proper analysis of potential impacts to minority populations, and it used a district numbering system that allowed incumbents to serve longer than they would have previously been able to. For these reasons, the Court declared the numbering of districts invalid and declared a series of districts within the Senate plan unconstitutional. The Court also directed the Senate to consider objections from the City of Lakeland, a jurisdiction that had been divided into two districts by the Senate.

The Senate tries again

In response to the Florida Supreme Court's action, the Senate was reconvened by the Governor for a 15-day extraordinary session to redraw the districts. This session began on March 14, 2012. After two committee meetings, a new set of district maps was proposed to the Senate for approval on March 22, 2012. The Senate approved the new maps 31-6 and the House concurred on March 27, 2012 sending the new Senate map back to the Florida Supreme Court. The Senate even decided to use a lottery method to assign district numbers with either even or odd numbers, a process at least one member objected to as an illegal casting of lots.

Florida Supreme Court approves new Senate map

The Supreme Court, upon receipt of the new Senate plan from the Florida Attorney General, conducted another oral argument on the matter where it heard challenges to the new Senate plan from the Florida Democratic Party, the League of Women Voters of Florida, the National Council of La Raza, Common Cause, and the Florida State Conference of NAACP Branches. This time, if the Court did not approve of the Senate reapportionment, the Court itself would have had the constitutional task of preparing a new map. The Court took a more limited approach in this second review and in its April 27, 2012 opinion, found that the opponents had not established that the Senate's second attempt included any constitutional violations.

In a concurring opinion, Justice Pariente questioned the short time frame for judicial review as well as the entire method used in Florida for redistricting. The Justice urged the Legislature and the 2018 Constitutional Revision Commission to further study whether Florida's redistricting methods reflect the will of its citizenry.

Preclearance review and other litigation

Under Section 5 of the Federal Voting Rights Act , Florida's redistricting efforts were subject to review by the U.S. Department of Justice (DOJ) because five of Florida's counties are considered preclearance jurisdictions (localities that cannot change voting or election procedures without Federal review). In this case, DOJ review was swift and all of Florida's new districts were cleared on April 30, 2012.

Two other attempts to challenge the process used by the Florida Legislature remain pending in Leon County Circuit Court. Neither set of plaintiffs prevailed on expedited motions for summary judgment, having failed to convince the Judge involved that the Plaintiffs had established the right to an injunction.

Looking ahead

At first, reapportionment might appear to be a mathematical exercise of interest only to cartographers and statisticians. However, the political ramifications of the districts elevate the process to political theater with the legislative and judicial branches playing key roles and setting the stage for the next 10 years of partisan debate. This year, the changes passed by the voters in 2010 added new layers of legal review that caused the Florida Supreme Court to raise the level of scrutiny imposed on the Legislature's efforts. Such scrutiny brought the Senate back into session to make changes, but also led to questions about the short timeframe imposed on the Court by the Florida Constitution.

It is clear that the current framework can result in a rushed, compressed timeline for completion, even when the Legislature starts the process as early as it did over the last year. While the Florida Constitution calls for non-political methods of drawing district lines, it tasks the very politicians whose viability may depend on those district lines with carrying out the

effort. The availability of technology for designing districts has also allowed anyone with an interest to join this process and increased the potential scrutiny. Given the political stakes, there is little doubt that in the near future Floridians will be asked again to decide whether further amendment to the process is needed.

Resources

U.S. Constitution

Florida Constitution

Florida Supreme Court Docket on Redistricting

In Re: Senate Joint Resolution of Legislative Apportionment of 1176, 37 Fla. L. Weekly S 181 (Fla. Mar. 9, 2012)

In Re: Senate Joint Resolution of Legislative Apportionment of 2-B, No. SC 13-460, (Fla. April 27, 2012)

Florida Redistricting Website

Florida Senate Redistricting Website

Leon County Clerk of the Circuit Court – High Profile cases including redistricting challenges

Fair Districts Now, Inc.

©2019 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.