

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

GEORGE MAURER,

Plaintiff,

vs.

STATE OF FLORIDA, *et al.*,

Defendants.

CASE NO.: 02-10028-CIV-JORDAN

FILED BY  
JUL 24 PM 4:27  
LARENCE HADDIX  
CLERK OF FLA. DIST. CT.  
MIAMI  
[Handwritten signature]

RAUL L. MARTINEZ, *et al.*,

Plaintiffs,

vs.

JOHN ELLIS "JEB" BUSH, *et al.*,

Defendants.

CASE NO.: 02-20244-CIV-JORDAN

**THE GOVERNOR'S, THE SPEAKER'S, THE PRESIDENT'S,  
AND THE SECRETARY'S AMENDED PROPOSED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW**

Defendants Governor Jeb Bush ("the Governor"), Tom Feeney, Speaker of the Florida House of Representatives ("the Speaker"), John McKay, President of the Florida Senate ("the President"), and Florida Secretary of State Katherine Harris ("the Secretary") submit their proposed Findings of Fact and Conclusions of Law with respect to the claims raised by George Maurer in *Maurer v. Florida* ("*Maurer*"), Case No. 02-10028-CIV-JORDAN, and by the Martinez Plaintiffs and the Deutsch Intervenors in *Martinez v. Bush* ("*Martinez*"), Case No. 02-20244-CIV-JORDAN:

[Handwritten initials]

## INTRODUCTION

The instant litigation arises from the decennial redistricting of Florida's congressional and state legislative districts resulting from the 2000 Census. On January 23, 2002, the Martinez Plaintiffs filed suit [D.E. 1].<sup>1</sup> The Deutsch Intervenors sought to intervene on April 26, 2002 [see D.E. 80]; Maurer filed suit the same day [see *Maurer* D.E. 1]. The Martinez Plaintiffs' remaining claims primarily arise under the Equal Protection Clause of the Fourteenth Amendment and § 2 of the Voting Rights Act. See Second Amended Complaint ("SAC") [D.E. 104]. The Deutsch Intervenors raise political gerrymandering claims against Florida's congressional districts, see Intervenors' Amended Complaint for Declaratory and Injunctive Relief ("Complaint in Intervention") [D.E. 145], as does Maurer, see Complaint for Declaratory and Injunctive Relief ("Complaint") [*Maurer* D.E. 1].

The Martinez Plaintiffs' filing set off a whirlwind of litigation that resulted in over 270 docket entries in *Martinez* alone and culminated in seven days of trial concluding on June 14, 2002. The Court heard testimony from six lay witnesses, accepted additional lay witness proffers in lieu of testimony, and heard testimony from four witnesses identified as experts. The Martinez Plaintiffs put on only one expert, Dr. Alan Lichtman, and relied upon the deposition transcripts of Dr. Gerald Webster in lieu of his appearance and testimony. The Deutsch Intervenors did not use an expert at trial, having chosen at trial not to call their identified expert, Dr. John Alford. Maurer was allowed to use a redacted version of Dr. Alford's expert report as his expert testimony. The Speaker

---

<sup>1</sup> Except where indicated otherwise, all docket entry numbers refer to the docket in *Martinez*.

put on Dr. Kevin Hill and Dr. Gordon Henderson and the President put on Dr. Harold Stanley as defense experts.<sup>2</sup>

After the final two defense witnesses were heard on the last day of trial, Maurer, the Martinez Plaintiffs, and the Deutsch Intervenors, elected not to elicit any rebuttal testimony from any expert or lay witness and chose not to put on any rebuttal case.

The Court heard a full day of oral argument from counsel for the parties and from Maurer (who proceeded *pro se* in the proceedings) on June 20, 2002.

Based on the evidence presented, the Court finds that under the principles established in *Johnson v. De Grandy*, 512 U.S. 997 (1994), *Davis v. Bandemer*, 478 U.S. 109 (1986), *California Democratic Party v. Jones*, 120 S.Ct. 2402 (2000), and *Nipper v. Smith*, 39 F.3d 1494 (11th Cir. 1994) (en banc), *cert. denied*, 514 U.S. 1083 (1995), Maurer, the Martinez Plaintiffs, and the Deutsch Intervenors wholly failed to prove their claims. Indeed, as to the majority of their claims, the plaintiffs and intervenors failed even to present a *prima facie* case. Therefore, as set forth below, defendants are entitled to judgment in their favor on all counts of the *Maurer* Complaint, the Martinez Plaintiffs' Second Amended Complaint, and the Deutsch Intervenors Complaint-in-Intervention.

## **FINDINGS OF FACT**

### **THE PLAINTIFFS**

1. George Maurer ("Maurer") is a resident of Monroe County, Florida, and a resident of former Congressional District ("CD") 20 and new CD 18, Florida House

---

<sup>2</sup> As a result of Dr. Webster's unavailability to testify during the first week of trial, defendants were required to put on their case prior to the close of the plaintiffs' and intervenors cases-in-chief. Consequently, it was not until the last day of trial that the plaintiffs and intervenors rested, after the bulk of defendants' case had been heard.

District (“HD”) 120, and Florida Senate District (“SD”) 40. Maurer.Ex. 2, “Maurer’s Answers to Interrogatories, and Requests for Admissions and Production.”<sup>3</sup>

2. Raul L. Martinez (“Martinez”) is an Hispanic resident of Hialeah, Florida. Martinez is a voter registered as a Democrat and a resident of CD 21, SD 39 and HD 110. Trans. at P45-47:L17-1; P57:L2-3.

3. Victor T. Curry (“Curry”) is a Black resident of Miami-Dade County, Florida. Curry is a voter registered as a Democrat and a resident of CD 17 and HD 109. Martinez.Ex. 88, “Plaintiffs’ Proffer as to Lay Witnesses” at 3 (¶ 2).<sup>4</sup>

4. Hattie D. Harden (“Harden”) is a Black resident of Broward County, Florida. Harden is a voter registered as a Democrat and resident of former and new CD 23. Plaintiffs’ Notice of Filing Pages 4 and 11 of Proffer [D.E. 171] at 4 (¶ 3).

5. Southwest Voter Registration Education Project, Inc. (“SVREP”) is a national, non-partisan organization headquartered in San Antonio, Texas, that supports voter registration throughout the country. SVREP has an office in Miami, Florida. Trans. at P686:L15-23 (Fernandez). SVREP does not represent individuals or have individual members. *Id.* at P707:12-14 (Fernandez).

6. Robert Poe (“Poe”) is the chairman of the Florida Democratic Party and a registered Democrat. Martinez.Ex. 88 at 5 (¶ 5).

---

<sup>3</sup> In lieu of Maurer testifying on his own behalf, the defendants accepted his discovery responses as his testimony. *See* Transcript of Trial Proceedings had before the Honorable Gerald B. Tjoflat, the Honorable Robert L. Hinkle, and the Honorable Adalberto Jordan, sitting as a Three-Judge Court (“Trans.”) at P938-39:L25-13.

<sup>4</sup> The Curry proffer does not indicate whether he is resident of former districts CD 17 and HD 109 or of the newly-enacted districts.

7. James O. Brown (“Brown”) is a Black resident of Duval County, Florida. Brown is a voter registered as a Democrat and a resident of former and new CD 3, former SD 2 (renumbered SD 1 in the new legislative redistricting plan), and former and new HD 15. *Martinez*.Ex. 88 at 5 (¶ 6).

8. Betty Holzendorf (“Sen. Holzendorf”) is a Black resident of Duval County, Florida. Sen. Holzendorf is a voter registered as a Democrat and a resident of former and new CD 3 and SD 2 (renumbered SD 1 in the new legislative redistricting plan). *Martinez*.Ex. 88 at 5-6 (¶ 7)

9. Carl Warren (“Warren”) is a Black resident of Hillsborough County, Florida. Warren is voter and a resident of SD 21 (renumbered SD 18 in the new legislative plan). *Martinez*.Ex. 88 at 6 (¶ 8).

10. E. Denise Lee (“Rep. Lee”) has been a candidate for HD 15 and may be a candidate for SD 1.<sup>5</sup>

11. Gary Siplin (“Rep. Siplin”) is a Black resident of Orange County, Florida. Rep. Siplin is a voter registered as a Democrat and a resident of former and new CD 3 and former and new HD 39. *Martinez*.Ex. 88 at 7 (¶ 10).

12. Matthew Meadows (“Rep. Meadows”) is a Black resident of Broward County, Florida. Rep. Meadows is a voter registered as a Democrat and a resident of former and new HD 94. *Martinez*.Ex. 88 at 8 (¶ 11).

---

<sup>5</sup> Rep. Lee failed to appear at her deposition set for May 30, 2002. In response, the Speaker moved to strike her as a plaintiff and to strike Count VI of the *Martinez* Plaintiffs’ Second Amended Complaint. *See* D.E. 218. To resolve the issue, the *Martinez* Plaintiffs’ counsel and the Speaker’s counsel agreed to a stipulation which was read into

13. Dorothy Bendross-Mindingall (“Rep. Bendross-Mindingall”) is a Black resident of Miami-Dade County, Florida. Rep. Bendross-Mindingall is a voter registered as a Democrat and a resident of former and new CD 17 and former and new HD 109. *Martinez*.Ex. 88 at 8 (¶ 12).

14. Richard P. Dunn, III (“Dunn”), is a Black resident of Miami-Dade County, Florida. Dunn is a voter registered as a Democrat and a resident of former and new CD 3 and HD 109. *Martinez*.Ex. 88 at 9 (¶ 13).

15. Enid Pinkney (“Pinkney”) is a Black resident of Miami-Dade County, Florida. Pinkney is a voter registered as a Democrat and a resident of former and new CD 3 and HD 109. *Martinez*.Ex. 88 at 9 (¶ 14).

16. Jacqui Coyler (“Coyler”) is a Black resident of Miami-Dade County, Florida. Coyler is a voter registered as a Democrat and a resident of former and new CD 3 and HD 109. *Martinez*.Ex. 88 at 9 (¶ 15).

17. Alexander Kelly (“Kelly”) is a Black resident of Miami-Dade County, Florida. Kelly is a voter registered as a Democrat and a resident of former and new CD 3 and HD 109. Kelly is a member of the Unrepresented People’s Positive Action Council, Inc. (“UPPAC”). *Martinez*.Ex. 88 at 10 (¶ 16).

18. Maria B. Reckley (“Reckley”) is a Black resident of Miami-Dade County, Florida. Reckley is a voter registered as a Democrat and a resident of former and new CD 3 and HD 103. Reckley is a member of UPPAC. *Martinez*.Ex. 88 at 10 (¶ 17).

---

the record. *See* Trans. at P1468-69:L15-6. However, that stipulation fails to identify Rep. Lee’s place of residence or whether or not she is a registered voter.

19. Philippe Derose (“Derose”) is a Black resident of Miami-Dade County, Florida. Derose is a voter registered as a Democrat and a resident of former and new CD 3 and HD 108. Plaintiffs’ Notice of Filing Pages 4 and 11 of Proffer at 11 (¶ 18).

20. The Unrepresented People’s Positive Action Council, Inc. (“UPPAC”), is a not-for-profit Florida corporation headquartered in Miami-Dade County, Florida. UPPAC’s goals include encouraging participation by members of the Black community in the political process. Martinez.Ex. 88 at 12 (¶ 19).

21. Nury Molina (“Molina”) is an Hispanic resident of Miami-Dade County, Florida. Molina is a voter registered as a Democrat and a resident of CD 18 and HD 119. Martinez.Ex. 88 at 12-13 (¶ 20).

22. Cindy Lerner (“Rep. Lerner”), is a resident of Miami-Dade County, Florida. Rep. Lerner is a voter registered as a Democrat, a resident of former HD 119, and the representative in Florida’s House of Representatives for former HD 119. Trans. at P725:L14-18.

23. Patrick Vilar (“Vilar”) is an Hispanic resident of Miami-Dade County, Florida. Vilar is a voter registered as a Democrat and a Democratic candidate for new HD 116. Martinez.Ex. 88 at 14 (¶ 22).

24. Lorenzo S. Ruiz (“Ruiz”) is an Hispanic resident of Miami-Dade County, Florida. Ruiz is a voter registered as Democrat and a resident of CD 21. Martinez.Ex. 88 at 14 (¶ 23).

25. Jose A. Paez (“Paez”) is an Hispanic resident of Miami-Dade County, Florida. Paez is voter registered as a Democrat and a resident of CD 18 and HD 107. Martinez.Ex. 88 at 15 (¶ 24).

26. Lavita Holmes (“Holmes”) is a Black resident of Hendry County, Florida. Holmes is a voter registered as a Democrat and a resident of former and new CD 23. *Martinez*.Ex. 88 at 15 (¶ 25).

#### THE INTERVENORS

27. Peter R. Deutsch (“Deutsch”) is a resident of former and new CD 20 and is a registered Democrat. *See* Intervenor’s Amended Complaint for Declaratory and Injunctive Relief (“Intervenor’s Complaint”) [D.E. 145] at ¶ 6; Defendant McKay’s Answer to the Deutsch Plaintiff-Intervenor’s Amended Complaint [D.E. 177] at ¶ 6; The Speaker’s Answer and Affirmative Defenses to the Deutsch Intervenor’s First Amended Complaint [D.E. 179] at ¶ 6.

28. Ida Scott (“Scott”) is a Black resident of Hallandale, Florida. Scott is a voter registered as a Democrat and a resident of former CD 23 and new CD 17, HD 101, and SD 29. Notice of Filing [D.E. 232], “Proffer by Ida Scott.”

29. Josh Brown (“Brown”) is a Black resident of Hallandale, Florida. Scott is a voter registered as a Democrat and a resident of former CD 23 and new CD 17, HD 99, and SD 29. Notice of Filing, “Proffer by Josh Brown.”

30. Bobbi Grace (“Grace”) is a Black resident of Dania, Florida. Grace is a voter registered as a Democratic and a resident of former CD 23 and new CD 20, HD 99, and SD 29. Notice of Filing, “Proffer by Bobbi Grace.”

31. Wayne Johnson (“Johnson”) is a resident of Lauderhill, Florida. Johnson is a voter registered as a Democrat and a resident of former CD 19 and new CD 20, HD 97, and SD 32. Notice of Filing, “Proffer by Wayne Johnson.”

32. Isadore Nachimson (“Nachimson”) is a resident of Century Village, Pembroke Pines, Florida. Nachimson is a voter registered as a Democrat and a resident of former CD 20 and new CD 23, HD 101, and SD 32. Notice of Filing, “Proffer by Isadore Nachimson.”

33. Ruby Lobben (“Lobben”) is a Black resident of Lauderhill, Florida. Lobben is a voter registered as a Democrat and a resident of former CD 19 and new CD 23, HD 101, and SD 32. Notice of Filing, “Proffer by Ruby Lobben.”

34. William Totino (“Totino”) is a resident of Lauderhill, Florida. Totino is a voter registered as a Democrat and a resident of former CD 20 and new CD 23, HD 97, and SD 33. Notice of Filing, “Proffer by Colonel William P. Totino (Retired).”

35. Natalie Mayeri (“Mayeri”) is a resident of Century Village, Pembroke Pines, Florida. Mayeri is a voter registered as a Democrat and a resident of former CD 20 and new CD 23, HD 101, and SD 32. Notice of Filing, “Proffer by Natalie Mayeri.”

36. Jose I. Perez (“Perez”) is a resident of Pembroke Pines, Florida. Perez is a voter registered as a Democrat and a resident of former CD 20 and new CD 21, HD 101, and SD 32. Perez resides in Pembroke Pines, Broward County, Florida. Notice of Filing, “Proffer by Jose ‘Joe’ I. Perez.”

37. Joseph F. Garcia (“Garcia”) is a resident of Surfside, Florida. Garcia is a voter registered as a Democrat and a resident of former CD 22 and new CD 18, HD 106, and SD 38. Notice of Filing, “Proffer by Joseph F. Garcia.”

38. Jacqueline Rubin (“Rubin”) is a resident of Surfside, Florida. Rubin is a voter registered as a Democrat and a resident of former CD 22 and new CD 18, HD 106, and SD 38. Notice of Filing, “Proffer by Jacqueline Rubin.”

39. Alex G. Fekete (“Fekete”) is the mayor of Pembroke Pines, Florida. Trans. at P809:L22-23.<sup>6</sup>

40. Claudia Davenport (“Davenport”) is a voter registered as a Democrat. Davenport resides in Everglades, Collier County, Florida. Davenport resides in former CD 14, HD 102, and SD 29. Davenport attended and spoke at the public redistricting hearing at Naples High School on September 24, 2001, and has communicated with the Redistricting Committee via e-mail. Trans. at P1478:L10-20.

41. Gerald R. Rizzo (“Rizzo”) is a white, non-Hispanic resident of St. Petersburg, Pinellas County, Florida. Rizzo is a voter registered as a Democrat. Rizzo resides in former CD 10 and new CD 11. Trans. at P1237:L2-8; Proffer by Dr. Gerald J. Rizzo [D.E. 248] at 1.<sup>7</sup>

#### THE DEFENDANTS

42. The State of Florida (“the State”) is one of the fifty states of the United States.

43. John Ellis Bush (“the Governor”) is the Governor of the State of Florida.

44. Tom Feeney (“the Speaker”) is the Speaker of the Florida House of Representatives.

45. John McKay (“the President”) is the President of the Florida Senate.

---

<sup>6</sup> Fekete testified at trial and did not identify his residence or whether he was a voter. *See* Trans. at P809-831. In addition, the claims of Pembroke Pines were dismissed on the pleadings for lack of standing. *See* Omnibus Order [D.E. 201] at 3.

<sup>7</sup> The remaining Deutsch Intervenor is Mara S. Giuliani (“Giulianti”). *See* Intervenor’s Amended Complaint for Declaratory and Injunctive Relief [D.E. 103] at ¶ 14. However, no proffer was submitted as to Giuliani and no evidence was presented supporting her standing to assert any claim.

46. Katherine Harris (“the Secretary”) is the Secretary of State for the State of Florida.

47. Robert Butterworth (“the Attorney General”) is the Attorney General for the State of Florida.<sup>8</sup>

#### **MAURER’S CLAIMS**

48. Maurer’s claim is a single-count complaint alleging that the congressional redistricting plan enacted by the Florida Legislature violates the Equal Protection Clause of the Fourteenth Amendment, Title VI of the Civil Rights Act of 1964, and § 2 of the Voting Rights Act under a “partisan” or “political” gerrymandering theory. *See* Complaint for Declaratory Judgment and Injunctive Relief [*Maurer* D.E. 1].

#### **THE MARTINEZ PLAINTIFFS’ CLAIMS**

49. With the Court’s prior rulings and Martinez Plaintiffs’ withdrawal of certain claims,<sup>9</sup> the Martinez Plaintiffs’ remaining claims in this proceeding are as follows:

---

<sup>8</sup> The Attorney General’s representative at trial stated to the Court that the Attorney General “is not filing any separate findings of fact or conclusions of law, and [does not] deem it necessary to participate in the closing arguments because the [Attorney General] concur[s] with the defense posture of th[e] case as it has proceeded through trial, and [the Attorney General] defer[s] to the defense counsel for the House and Senate to submit proposed findings of fact and conclusions of law on behalf of the defense side of the case, and to make oral arguments appropriate as to the defense side of the case.” Trans. at P1896-97:L22-8 (Burgener).

<sup>9</sup> On May 30, 2002, the Court granted judgment on the pleadings to the defendants as to the portion of Count I based on § 2 of the Voting Rights Act (42 U.S.C. § 1973) and as to Count II in its entirety, in which the Martinez Plaintiffs assert that defendants’ “fail[ed] to provide redistricting-related written materials and other information in languages other than English, and thereby violated §§2, 4(f)(4) and 203 of the Voting Rights Act.” SAC at ¶ 81. The “languages other than English” that the Martinez Plaintiffs’ assert the Voting Rights Act covers are Creole (spoken by Haitian-

a. “Count I: Unlawful Discrimination in the Redistricting Process,” brought by all of the Martinez Plaintiffs and asserting that the redistricting process engaged in by the State of Florida denied the individual plaintiffs and members of SVREP and UPPAC an equal opportunity to participate in the redistricting process based upon their race and ethnicity in violation of the Fourteenth Amendment, *see* Corrected Second Amended Complaint for Declaratory and Injunctive Relief [D.E. 165] at ¶ 70;

b. “Count IV: Dilution and Retrogression of Minority Voting Power (Congressional District 23),” brought by Harden, Holmes, Rep. Meadows, SVREP, and UPPAC and asserting that the congressional redistricting plan violates §§ 2 and 5 of the Voting Rights Act as to CD 23, *see id.* at ¶¶ 88 & 98;

c. “Count V: Dilution of Minority Voting Power (Congressional District 17),” brought by Curry, Rep. Bendross-Mindingall, Dunn, Pinkney, Colyer, Kelly, Reckley, Derose, SVREP, and UPPAC and asserting that the congressional redistricting plan violates §§ 2 and 5 of the Voting Rights Act as to CD 17, *see id.* at ¶¶ 100 & 102;

d. “Count VI: Dilution of Minority Voting Power (Duval County – House District 15),” brought by Rep. Lee and Brown and asserting that the legislative redistricting plan violates § 2 of the Voting Rights Act as to HD 15, *see id.* at ¶¶ 104-105;

---

Americans) and Spanish. *See* SAC at ¶¶ 80-81. The Court also dismissed Count III based upon the Martinez Plaintiffs’ withdrawal of that claim at the May 29, 2002, Status Conference. *See* Omnibus Order [D.E. 201] at 3.

e. “Count VII: Dilution of Minority Voting Power (Orange County – House District 39),” brought by Rep. Siplin and asserting that the legislative redistricting plan violates § 2 of the Voting Rights Act as to HD 39, *see id.* at ¶¶ 113 & 115;

f. “Count VIII: Dilution of Minority Voting Power (Broward County – House District 94),” brought by Rep. Meadows and asserting that the legislative redistricting plan violates (presumably) § 2 of the Voting Rights Act<sup>10</sup> as to HD 94, *see id.* at ¶¶ 117 & 115;

g. “Count IX: Dilution of Minority Voting Power (MiamiDade County – House Districts 103, 108, 109, 118),” brought by Curry, Rep. Bendross-Mindingall, Dunn, Pinkney, Colyer, Kelly, Reckley, Derosé, Lerner, SVREP, and UPPAC and asserting that the legislative redistricting plan violates § 2 of the Voting Rights Act as to HDs 103, 108, 109, and 118, *see id.* at ¶¶ 123 & 133;<sup>11</sup>

h. “Count X: Dilution of Minority Voting Power (Senate District 2, Renumbered Senate District 1),” brought by Sen. Holzendorf and Brown and asserting that the legislative redistricting plan violates § 2 of the Voting Rights Act as to SD 1, *see id.* at ¶¶ 136, 137 & 145;

---

<sup>10</sup> The Martinez Plaintiffs fail to cite to any provision of the Voting Rights Act in Count VIII. *See id.* at ¶¶ 117-122.

<sup>11</sup> Although the Martinez Plaintiffs’ proposed Findings of Fact and Conclusions of Law contain the conclusion that “State House Districts 103, **104**, 108, and 109 of the newly enacted plan . . . exhibit packing, retrogression, and dilution of Black voter strength,” *id.* at ¶ 144 (emphasis added), the Court notes that the Second Amended Complaint does not contain a challenge to HD 104 and that it would be error to make such a finding as to this district.

i. “Count XI: Dilution and Retrogression of Minority Voting Power (Senate District 21, Renumbered Senate District 18),” brought by Warren and asserting that the legislative redistricting plan violates §§ 2 and 5 of the Voting Rights Act as to SD 18, *see id.* at ¶¶ 147 & 150;

j. “Count XII: Minority Voter Influence Dilution (Congressional District 3),” brought by Sen. Holzendorf, Rep. Lee, Rep. Siplin, and Brown and asserting that the congressional redistricting plan violates § 2 of the Voting Rights Act as to CD 17, *see id.* at ¶¶ 152 & 155;

k. “Count XIII: Dilution and Retrogression of Minority Voting Power (Disparate Treatment among Hispanics in South Florida),” brought by Martinez, Molina, Vilar, Ruiz, Paez, Rep. Meadows, Rep. Bendross-Mindingall, Rep. Lerner, and SVREP and asserting that the congressional and legislative redistricting plans violate §§ 2 and 5 of the Voting Rights Act, the Equal Protection Clause of the 14th Amendment, and 42 U.S.C. § 1983 as to CDs 14, 17, 18, 19, 20, 21, 22, 23, and 25, HDs 94, 102, 103, 104, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, and 119, and SDs 36, 38, and 40, by diluting and retrogressing the voting power of non-Cuban Hispanics, *see id.* at ¶¶ 157, 158, 160, 162 & 164;

l. “Count XIV: Partisan Gerrymandering,” brought by “the Plaintiffs who are registered Democrats [*i.e.*, all of the individual plaintiffs except for Warren] and Poe” and asserting that the congressional and legislative redistricting plans violate the Equal Protection Clause of the 14th Amendment and 42 U.S.C.

§ 1983 as a result of partisan gerrymandering to benefit Republican interests over Democrat interests, *see id.* at ¶¶ 167 & 171; and

m. “Count XV: Section 5 Pre-Clearance Procedure,” brought by Warren, Holmes, and SVREP and asserting that the submission under § 5 of the Voting Rights Act of the congressional and legislative redistricting plans by the Governor, the Speaker, and the President to the Department of Justice violated § 5 in that the change in practice of having the Attorney General make § 5 submissions was required to be pre-cleared under § 5, *see id.* at ¶¶ 175-177.<sup>12</sup>

#### THE DEUTSCH INTERVENORS’ CLAIMS

50. With the Court’s prior rulings and Deutsch Intervenors’ withdrawal of certain claims,<sup>13</sup> the Deutsch Intervenors’ remaining claims in this proceeding are as follows:

a. in Count I, the Deutsch Intervenors assert that adoption of the congressional redistricting plan violated the intervenors’ rights to vote under the Article I, §§ 2 & 4 of the United States Constitution, the Fourteenth Amendment, and the Nineteenth Amendment, *see Intervenors’ Complaint* at ¶¶ 34-35;

---

<sup>12</sup> The Court notes that although the Martinez Plaintiffs structure a substantial portion of the theories in support of their claims on the assertion that the Open Primary provision of the Florida Constitution, FLA. CONST. ART. VI, § 5(b), is unconstitutional under the United States Constitution, no count in the Second Amended Complaint makes a facial or as-applied challenge to that provision. The claim, therefore, is not properly before the Court. Moreover, this claim is not one that requires the attention of a Three-Judge Panel convened pursuant to 28 U.S.C. § 2284.

<sup>13</sup> *See Trans.* at P351:L15-18 & P352:L22-25; Order [D.E. 255] dismissing Counts V and VI of the Deutsch Intervenors Amended Complaint with prejudice.

b. in Count II, the Deutsch Intervenors assert that the Florida Legislature did not consider or uniformly apply objective standards in adopting the congressional redistricting and thereby violated the intervenors' rights to equal protection under the Fourteenth Amendment, *see id.* at ¶¶ 36-37;

c. in Count III, the Deutsch Intervenors assert that congressional redistricting plan violates their rights under the Privileges and Immunities Clause of the Fourteenth Amendment by diluting their votes in comparison to votes cast by Republican voters, *see id.* at ¶¶ 38-39; and

d. in Count IV, the Deutsch Intervenors assert that the congressional plan impermissibly burdens their rights to freedom of association and to petition their government guaranteed by the First Amendment, *see id.* at ¶¶ 40-41.

#### **BACKGROUND**

51. As a result of the 2000 Census and the reapportionment that followed, Florida gained two Congressional seats, raising its total number of Congressional districts to twenty-five. SAC at ¶ 56; The Speaker's Answer and Affirmative Defenses to the Martinez Plaintiffs' Second Amended Complaint ("Speaker's Answer") at ¶ 56; Defendant McKay's Answer to Plaintiffs' Second Amended Complaint ("President's Answer") at ¶ 56.

52. Florida's population grew by more than 3 million people during the 1990s. As a result, Florida was apportioned 2 additional representatives in the United States House of Representatives, bringing the total to 25. The total population of the State of Florida in 1990 was 12,937,926. The 2000 population of the state was 15,982,378, which

represents an increase of 3,044,452 persons or 23.52 percent over the ten year period.  
Trans. at P2190:L1-7.

53. The 2000 Census documented that some areas of Florida had grown more rapidly than others. Thus, during its regular session in 2002, the Florida Legislature was faced with establishing boundaries for 25 congressional districts and adjusting boundaries for all 40 state senatorial districts and all 120 state house districts in order to balance population and ensure that the legislative and congressional boundaries met the constitutional requirement of “one person, one vote.” Sen Ex. 45 at 40-41.

#### *The Legislature’s Public Outreach*

54. Florida began the redistricting process in 2001, preparing the technological groundwork for redistricting, holding a series of twenty-four public hearings all over Florida, and then debating and enacting redistricting legislation. *See* Trans. at P2174-5:L21-117.

55. Both the House and Senate established redistricting websites. *See* SAC at ¶ 48; Speaker’s Answer at ¶ 48; President’s Answer at ¶ 48. In summary, the Redistricting Committee websites made the following information available to the public:

- The names and districts of committee members for each of the redistricting committees.
- Every plan submitted by any member of the Legislature.
- A committee and council meeting timeline, along with transcripts and meeting packets that were utilized in any of the meetings.
- A public hearings timeline, with information about the specific locations and times of each of the public hearings to be held.
- A public hearings archive including downloadable information following each of the public hearings.
- The constitutional requirements for redistricting Florida’s legislative districts under the Florida Constitution.

- News and press releases regarding the redistricting process.
- A Frequently Asked Questions (FAQ) page with information regarding the 2000 census data.
- Florida census data and a 54-page slide presentation providing an overview of Florida census data and trends.
- Information on the FREDs 2000 software, including: an order form, installation instructions, a dataset with Florida redistricting information to be integrated for use with the software, a downloadable update to the software, and a page dedicated to providing tutorial and other information to assist users of the software.
- Information on how to contact the House and Senate Redistricting Committees and their staffs.

*See* Martinez.Ex. 38(j)-(p).

56. The public hearings times and dates were advertised in newspapers as well as listed on the redistricting websites. Sen.Ex. 7A; Trans. at P2155:L11-19. The newspapers used for advertising the public hearings were the Tallahassee Democrat, Florida Times-Union, Orlando Sentinel, Daytona News-Journal, Tampa Tribune, The Ledger, The Stuart News, Palm Beach Post, Sarasota Herald Tribune, Naples Daily News, Ft. Myers News Press, Miami Herald/El Nuevo Herald, Ft. Lauderdale Sun Sentinel, Pensacola News Journal, and the Gainesville Sun. *See* Spkr.Ex. 79, Congressional Section 5 submission, Disk L3, Folder 5c. The website provided hearing times and locations, as well as the protocol and procedure for the hearings. *See* Martinez. Ex. 38(l) & 38(m). The websites encouraged persons unable to attend the meetings to submit written testimony and plans to the House or Senate Redistricting Committees and also provided contact information so that members of the public could contact the committees either before or after the public hearings. *See* Martinez.Ex. 38(m).

57. The public hearings took place between July 12, 2001, and October 16, 2001, in locations including Tallahassee (July 12), Jacksonville (August 6), Orlando

(August 20), Tampa (August 27), West Palm Beach (September 5), Ft. Myers (September 25), Pembroke Pines (October 1), Ft. Lauderdale (October 1), Opa Locka (October 2), Miami (October 3), Key Largo (October 3), and Gainesville (October 16). *See* Sen.Ex. 7A .

58. At the request of Sen. Wasserman-Schultz—a Democratic member of the Legislature—a second public hearing was conducted in Broward County. Trans. at P886-87:L24-11.

59. Of the twenty-four public hearings, thirteen concluded before 5:00 p.m. and eleven concluded after 5:00 p.m., including the hearings held in Jacksonville, Orlando, West Palm Beach, South Palm Beach (Delray Beach), Naples, Ft. Lauderdale, Opa Locka, Miami, and Gainesville. *See* Sen.Ex. 7A .

60. Approximately 4,500 people attended the public hearings, three times the number of people that attended the redistricting hearings in 1992. Trans. at P2161:L11-23. Over one-thousand people spoke at the 2002 public hearings, in contrast to the fewer than 400 people that spoke at the 1992 hearings. *Id.* at P2161-62:L24-3. In the 1992 cycle, approximately seventeen legislators attended each meeting; in the 2002 cycle, approximately 26 legislators attended. *Id.* at P2162:L15-18.

61. The hearings consisted of an overview of the legal parameters of redistricting, a brief census overview outlining demographic facts in summary form, and public testimony, which included opportunities for legislators to ask clarifying questions. Trans at P2163-65:L24-8 (Guthrie).

62. Following the public hearings, the redistricting committee websites made the following information available for downloading by the general public (and,

obviously, any legislator): (1) either an audio or video recording of the hearing, (2) a written transcript of the hearing, (3) the slide presentation made at the hearing, and (4) any public documents made available at the hearings and submissions (e.g., correspondence) from the public. *See* Spkr.Ex. 49; Martinez.Ex. 38.

63. Throughout the redistricting process, the public accepted the Legislature's encouragement to participate. In addition to the public hearings, hundreds of letters and e-mail communications were received from the public. *See* Trans. at P2174:L7-12 (Guthrie); *see generally* Spkr.Ex. 49 (e-mail and correspondence received from the public).

64. As part of its public outreach efforts in the redistricting process, the Florida Legislature developed the Florida Redistricting System or "FREDS" software, starting the development process in late 1997 or the beginning of 1998. Trans. at P79:L8-18 (Guthrie). Development of FREDS was a joint House and Senate project coordinated by John Guthrie, Florida Senate Staff Director for Systems Operations and Training, and Todd Thomson, Florida House Staff Director of the House Redistricting Committee. *Id.* at P78:L5-6 (Guthrie); P80-81:L24-18 (Guthrie).

65. The purpose of FREDS was to create a program for drawing and reviewing districting plans that would be easy to use by both the Legislature and the public; in fact, it was recognized from the very beginning that FREDS could be made available to the public. Trans. at P81-82:L19-14 (Guthrie). FREDS contained data from the 1990 and 2000 censuses and Florida election results. *Id.* at P83:L8-14 (Guthrie). The census data included population counts broken down by race, including voting-age population, and registration counts broken down by party, gender, age, and race; the

election data included actual election results for Florida elections in 1992, 1994, 1996, 1998, and 2000. *Id.* at P84:L6-14 (Guthrie).

65-A. At trial, Guthrie testified that he asked Florida's Office of the Demographic and Economic Research to attempt to geocode the election information to the census block level. Trans. at P106-107:L25-22. However, that office reported that it was unable to geocode "15 to 20 percent of the voters" to their census blocks. *Id.* at P107:L20-22.

65-B. The Martinez Plaintiffs' second expert, Dr. Webster, was the only other witness to testify on this issue (through his deposition). Dr. Webster agreed that it was not possible to geocode the data. Webster Depo. Vol. I, P8-9:L20-20. Indeed, Dr. Webster specifically testified that "[w]e attempted to do so, and found it virtually impossible to geocode properly and correctly a sufficient proportion of all registered voters to make the data set valuable . . . ." *Id.* at Vol. I, P9:L4-7. In his second deposition, Dr. Webster testified that geocoding formed no basis for any of the opinions as expressed in his report. Webster Depo. Vol. II, P73:L16-23. In addition, Dr. Webster testified that a "Dr. Klinkner" had asked him to geocode Florida election results so that Dr. Klinkner could use it in redistricting map drawing, but that "[i]t was **impossible** to do it well enough for [Dr. Klinkner] to utilize in the time that [Dr. Klinkner] had . . . ." *Id.* at P77:L19-21 (emphasis added).

65-C. Because geocoding the election data was not feasible or possible, the FREDS working group chose disaggregation of election data to the census block level as the method by which FREDS would report election data by census block. Trans. at P106-107:L25-10 (Guthrie).

66. On July 12, 2001, a beta version of FREDS was released to members of the Legislature as well as to the public. Upon this initial release, it was discovered that FREDS was incompatible with older versions of Microsoft Internet Explorer. Trans. at P89:L7-22 (Guthrie). The necessary Internet Explorer update had been available free on the Microsoft website long before the July 12, 2001, release of FREDS. *Id.* at P89:L14-22 (Guthrie); P90-91:L25-4 (Guthrie). The problem was diagnosed within hours of the release and the method of resolving it was publicized, including by posting the information on the redistricting websites and directly calling the twenty or so members of the public that had purchased FREDS at that time. *Id.* at P2152-53:L8-12 (Guthrie).

67. FREDS costs \$20, in distinct contrast to commercially available programs that could be used to draw district lines, such as Maptitude, which costs \$3,500 and required additional expenditures on top of that before it could be used for redistricting. Trans. at P2147:L18-25 (Guthrie).

68. The computer requirements for running FREDS are not substantial. At present prices, a computer with capabilities exceeding the requirements for running FREDS can be purchased for less than \$500. Trans. at P2150-51:L12-2 (Guthrie).

69. In addition to selling FREDS for \$20, FREDS was made available to the public by distributing it to 508 public libraries across the state of Florida, 28 depository libraries, each public and private college library, and supervisors of elections in each county. Trans. at P142:L7-17 (Guthrie); P2156-57:L22-20 (Guthrie). FREDS was also available at no cost on the redistricting websites. *Id.* at P2155:L15-19 (Guthrie).

70. Training on how to use FREDS was made available in a variety of ways. After it was suggested that training be provided at the August 27, 2001, Clearwater public

hearing, training was provided at each public hearing from that date forward. Trans. at P186-87:L11-6; P2170:L11-19. Consequently, training on FREDS was available at the Clearwater, Lakeland, Vero Beach, West Palm Beach, Delray Beach, Wauchula, Sarasota, La Belle, Naples, Ft. Myers, Pembroke Pines, Ft. Lauderdale, Opa Locka, Miami, Key Largo, Pensacola, Panama City, and Gainesville public hearings. *Id.*; Sen.Ex. 7A . In addition, the software package includes a 138 page help manual and a tutorial. Trans. at P2148:L6-12 (Guthrie). In addition, the help manual was available for viewing and downloading on the redistricting websites. Trans. at P189:L13-20; *see also* Mart.Ex. 41, "FREDS 2000 Help Manual."

71. No evidence was presented that indicated that any of the traditional methods of contacting one's legislator were in any way curtailed or affected by the redistricting process. Accordingly, any Floridian with concerns about redistricting was able to visit, telephone, and write correspondence to his or her legislator, in addition to the additional methods provided through distribution of FREDS, the public hearings, and the establishment of the House and Senate redistricting websites.

72. In addition to outreach to the general public, the Legislature also reached out to specific voting rights and public interest groups. On December 21, 2001, Representative Johnnie Byrd, Chairman of the House Procedural and Redistricting Council, sent a letter to the Florida Democratic and Republican Parties, Common Cause, the Florida State Conference of NAACP Branches, the Florida League of Women Voters (both statewide and the Tallahassee chapter), and the American Federation of State, County and Municipal Employees. In the letter, Chairman Byrd invited these organizations to participate in the redistricting process, stating:

In the continuing spirit of having the most fair and open redistricting in Florida's history I would like to personally invite you to our Redistricting committee meetings on January 7, 2002 to present your view on the maps that have been proposed thus far and offer any redistricting plans or ideas that your organization has developed. These committee meetings will serve as yet another opportunity for the public to have their voice heard on redistricting matters.

Spkr.Ex. 49-3.

73. On January 7, 2002, the Florida State Conference of NAACP Branches (NAACP) responded to Chairman Byrd's letter with a memorandum to the House Redistricting Committee, noting that while the "NAACP usually includes alternative redistricting plans" when it presents analysis of redistricting plans being considered by state and local jurisdictions, it was "not necessary" to do so at that point in Florida's redistricting process, based on the plans already proposed. Spkr.Ex. 49-2.

74. The NAACP further observed that "Florida has done a better job than many states" in its endeavor to comply with Section 2 of the Voting Rights Act. The letter also provided the NAACP's analysis of plans under consideration at that time. *Id.*

75. On January 22, 2002, Rep. Mario Diaz-Balart, Chairman of the House Congressional Redistricting Committee, sent another letter to the NAACP, thanking it for the memorandum and inviting NAACP participation in a Committee meeting to workshop and discuss the memorandum. *See* Speaker's Ex. 49-1.

#### *The Legislative Process*

76. In total, the House Redistricting Subcommittees (House, Senate and Congressional) held 16 meetings between October, 2001 and February, 2002, to workshop the concepts being presented by various plans and plan amendments filed. *See* Spkr.Exs. 50-60 & 136-144. Early in the process, the committee leadership expressed its

intent to proceed by working toward consensus among the committee membership in developing redistricting plans. *See* Spkr.Ex. 52 at P58:L19-24.

77. During this time, committee leadership announced that the staff of the redistricting committee was available to assist any member of the Legislature in understanding demographic, legal, or other relevant issues. *See* Spkr.Ex. 52 at P62-63:L21-1. All members were encouraged to engage in the process by filing plans and plan amendments, and to utilize the committee staff. *See id.* at P 65:L5-10. Each of the plans filed was posted on the Internet and available for public review and comment. *See id.* at P66:L3-7; *see also* Martinez.Ex. 38(j).

78. Proposed congressional and state redistricting plans were filed for consideration by Rep. William F. Andrews (H087H001 and H087H002), Rep. Anna Holliday Benson (H003H001 and H003H002); Rep. Phillip J.Brutus (H108H001 and H108H002); Rep. Johnnie B. Byrd; Jr. (H062H001); Rep. Larry Crow (H049H001 and H049H002); Rep. Nancy Detert (H070H002 and H070H004); Rep. Greg Evers (H001H001); Rep. Frank Farkas (H052H001 and H052H002); Rep. Andy Gardiner (H040H001); Rep. James Harper; Jr. (H084H001); Rep. Mike Hogan (H013H003); Rep. Cindy Lerner (H119H001); Rep. Will Kendrick; (H010H003 and H010H005); Rep. Bev Kilmer (H007H001); Rep. Jeffrey D. Kottkamp (H074H001); Rep. Mitch Needelman (H031H003 and H031H005); Rep. Joe Negron (H082H003); Rep. Joe H. Pickens (H021H002); Rep. Marco Rubio (H111H001 and H111H003); Rep. Timothy M. Ryan (H099H001 and H099H002); Rep. David Simmons (H037H002); Rep. Joseph R. Spratt; (H077H004); Rep. Rob Wallace; (H047H001); Sen. Alex Diaz de la Portilla (S34S00017 and S34S00031); Sen. Betty S. Holzendorf (S02S00010, S02S00012, S02S00019,

S02S00025, S02S00028, and S02S00035); Sen. Bill Posey (S15S0002 and S15S00030); Sen. Charlie Clary (S07S00033 and S07S00034); Sen. Daniel Webster (S12S00027 ); Sen. Debbie Wasserman Schultz (S32S0008 ); Sen. John F. Laurent (S17S0001, S17S0003, S17S0005, S17S0006, S17S0009, S17S00011, S17S00016, S17S00022, S17S00023, S17S00024, S17S00026, S17S00032, and S17S00036); Sen. Steven A. Geller (S29S0007, S29S00013, S29S00014, S29S00015, S29S00018, S29S00020, S29S00021, and S29S00029); Rep. Edward L. Jennings, Jr. (H023S001); Rep. David D. Russell, Jr. (H044S001); Rep. Rob Wallace (H047S001); Rep. Johnnie B. Byrd, Jr. (H062S001); Rep. Bruce Kyle (H073S001); Rep. Christopher L. Smith (H093S001); Rep. Timothy M. Ryan (H099S001); Rep. Marco Rubio (H111S001); Sen. Jack Latvala (S19C0004, S19C0005, S19C0010, S19C0011, S19C0015, S19C0016, S19C0017); Sen. Daryl L. Jones (S40C0006 and S40C0012); Sen. Burt L. Saunders (S25C0007); Sen. Walter G. Campbell (S33C0009); Sen. Ginny Brown-Waite, (S10C0013); Sen. Lesley Miller, Jr. (S21C0014); Rep. Mike Hogan, (H013C001); Rep. Andy Gardiner, (H040C001); Rep. Frank Farkas, (H052C001); Rep. Johnnie B., Byrd, Jr. (H062C002); Rep. J. Dudley Goodlette (H076C001); Rep. Christopher L. Smith (H093C001); Rep. Matthew J Meadows(H094C001 and H094C002); Rep. Mario Diaz-Balart (H112C001 H112C002, H112C003, and H112C004). *See* Spkr.Ex. 79, Legislative Section 5 submission, Disk L1, Folder 9h; Disk L2, Folder 9s, Disk C; Trans. at P792:L7-11 (Lerner).

79. In total, the Senate redistricting committees held seven meetings between January 7, 2002, and March 12, 2002, to discuss the formulation of redistricting plans. *See* Sen.Exs. 30-43.

*The Legislature's Consideration of the Congressional Plans*

80. During the final debate on the congressional redistricting plans, members of the Legislature addressed amendments to the original congressional reapportionment plans as well as the key features and communities of interest inherent to those parts of the bill that remained unchanged. *See, e.g.*, Spkr.Ex. 65, 3-22-02 House Floor Debate at P5-10:L5-7 (Rep. Diaz-Balart).<sup>14</sup> For example, the debate in the House demonstrates that adoption of the congressional plan was based on careful legislative balancing of constitutional factors and objective criteria important to legislators and their constituents:

After careful analysis, Mr. Speaker, we have found that the Senate amendment that we're dealing with now complies with state as well as federal constitutional and statutory provisions. It accords with the Voting Rights Act in the areas of the state and draws districts in those areas that comply with the act. It respects communities of interest, Mr. Speaker, where possible.

It strives, where feasible, to maintain political subdivisions together. It draws districts in a manner that seeks to avoid voter confusion wherever possible and takes into account the wishes of our constituents in various areas of our state. And, Mr. Speaker, it complies with the constitutional mandate of zero deviation.

Mr. Speaker, as I have, again, stated previously, the art, if you will, of drafting congressional redistricting plans involves a continuous process of accommodating competing interest, and we discussed this at length. No plan is perfect. And certainly in a bicameral legislature, the development of apportionment plans is a process, obviously, of compromise.

Spkr.Ex. 65, 3-22-02 House Floor Debate at P4:L3-24 (Rep. Diaz-Balart).

---

<sup>14</sup> In addition to the portions of the transcript quoted herein, the transcript of the March 5, 2002, House floor debate contains a detailed discussion of the multiple competing principles faced by the Legislature in redistricting as well as a district-by-district analysis of significant issues in each congressional district. *See id.* at P9-11:L6-21 (competing principles) and P11-19:L22-14 (district-by-district analysis).

81. The House floor debate further reflects that the adopted plan was the result of a process that was considered “open, fair, legal, inclusive, and member-driven” and the debate reflects specific attention to objective criteria considered by the House in passing the congressional plan. *See* Spkr.Ex. 65, 3-22-02 House Floor Debate at P5-11:L5-24 (Rep. Rubio & Rep. Diaz-Balart). For example, the discussion included observations regarding compactness, communities of interest, minimization of the division of political boundaries and preservation of existing districts. *See id.* at P5-8:L5-21 (Rep. Diaz-Balart). (noting, *inter alia*, that Districts 2,4 and 12 had been made more compact, that District 5 maintained communities of interest along coastal areas as well as maintaining rural and agricultural communities of interest, that Hillsborough County had been divided into fewer districts, that District 10 would be wholly contained in one county, that all of Lee County would be contained in District 14, that District 11 was similar to the current district).

82. In addition, House floor debate recognized that criteria such as incumbency protection and minimizing population deviation were goals incorporated into the development of the adopted plan. *See* Spkr.Ex. 65, 3-22-02 House Floor Debate at P9-10:L15-7 (Rep. Diaz-Balart) (noting “further alterations for incumbency protection purposes to accommodate Congressman Alcee Hastings,” as well as a population shift in District 25 to achieve a zero deviation in District 21).

83. One of the most complicated and significant issues faced by the Legislature was the result of the need to create an additional congressional district in South Florida—one of the two to which Florida is entitled as a result of the 2000 Census—combined with the slow growth in several of the existing South Florida

congressional districts. Indeed, this problem was specifically addressed during the House floor debate on proposed congressional plans: "There were significant changes in other south Florida districts largely due, Mr. Speaker, to the creation of the new district [CD 25], and also due to the slow growth in Districts 17, 18, 22, and 23 that required additional areas to be added to these districts." Spkr.Ex. 63, 3-5-02 House Floor Debate at P17:L7-11 (Rep. Diaz-Balart).

84. The House floor debate further reflects the impact of the underpopulation of CD 17 and the consequence of the creation of CD 25 in South Florida:

District 17 was the most underpopulated of all the districts in the entire state. This district was also impacted, obviously, by the creation of new District 25. Nevertheless, it retains almost 70 percent of its current core population and maintains its urban character. Now, Mr. Speaker, that is perhaps the most compact district in the entire state.

Spkr.Ex. 63, 3-5-02 House Floor Debate at P17:L17-23 (Rep. Diaz-Balart).

85. In the House Floor debate on the proposed congressional plans, the interplay of the configurations of CDs 17, 22, 23, and 25 was explained:

District 22, Mr. Speaker, is a coastal community of interest. Frankly, this is drawn, keeping in mind, Mr. Speaker, that the incumbent is a senior member of our delegation and it is in the best interest of the state to maintain seniority and clout in the Congress of the United States of America.

These considerations, Mr. Speaker, account for some of the odd configurations of the districts. The creation of District 25 pushed District 17 northward which in turn resulted in a northward shift of District 23. As a result of this, Mr. Speaker, in an attempt to maintain partisan balance and to enhance District 22, it is also significantly reconfigured.

Spkr.Ex. 63, 3-5-02 House Floor Debate at P19:L2-14 (Rep. Diaz-Balart).

*The Legislature's Consideration of the Legislative Plans*

86. The House Floor debate reflects that the development and ongoing improvement of the House plan was based on input from members of the Legislature as well as members of the public. *See* Spkr.Ex. 63, 3-05-02 House Floor Debate at P63:L14. (Rep. Ball). As with its adoption of the congressional plan, the record reflects both consideration of demographic trends unique to Florida and a careful balancing of objective criteria in analyzing and adopting the House redistricting plan:

First, the members will note that the amendment substantially preserves the core of existing districts. This minimizes the risk of voter confusion and enhances the continuity of member representation of his or her district. Second, the plan improves the compactness and overall appearance of the existing districts. Third, it adapts to the varied but substantial population growth in this state and the political, social, and economic problems that such growth generates. Fourth, the plan recognizes and attempts to account for the fact that the character of many parts of Florida is changing and will continue to change in the next ten years. Communities once exclusively rural are becoming more urban. Agricultural areas are increasingly concerned with issues once reserved only for the more populated areas. This amendment does a better job of recognizing these changing communities of interest than the existing plan.

Spkr.Ex. 63, 3-05-02 House Floor Debate at P64:L7-22 (Rep. Ball).

87. The House floor debate highlights the very specific nature of legislative balancing of redistricting criteria, as exemplified by discussions of concerns in parts of north and central Florida addressed by the House plan. *See* Spkr.Ex. 63, 3-05-02 House Floor Debate at P65:L2-24 (Rep. Ball). For example, the debate reveals attempts to accommodate population shifts combined with efforts to preserve the core of existing districts in northwest Florida. *See id.* Similarly, the record reflects a concern for minimizing population deviation in light of population changes while preserving political boundaries and existing districts in the Jacksonville area. *See id.*

88. With respect to the Orlando area, the debate reflects the interplay of such factors as population shifts and compactness, in the context of a common-sense appreciation for the characteristics of that region of the State. *See* 3-05-02 House Floor Debate at P65-66:L22-3 (Rep. Ball).

89. The conflicting interests and issues involved in redistricting House seats in Miami-Dade County and the rationale behind this portion of the House redistricting plan were aptly described in the March 5, 2002, House floor debate. Indeed, the discussion of the conflicting tides of the multiple redistricting principles affecting Miami-Dade County reflects the Legislature's entire redistricting struggle in microcosm:

This plan is a culmination of two things. First, the input that we got at the public hearings that were held in Miami-Dade County where we heard over and over again the concerns of the average citizens in the county. Second, the input received from most of the members of the delegation. And the ultimate result is a plan that we believe visually depicts the core concerns of nearly every resident of Miami-Dade County. And those core concerns are two-fold. One, the impact of growth on the infrastructure of the county, including its schools, its roads, and its municipal services.

And, two, economic development. Let me explain. The history of development and growth in Miami-Dade County is one of western progression. It's no coincidence that, based upon the 2000 census, the House districts that are overpopulated in Dade are the western seats. In contrast, almost all of the eastern seats need to gain population. Over the last 60 years and especially over the last 10, Dade's growth has been in the western areas of the county.

You can, therefore, draw or take a slice of Miami-Dade along a north/south axis, and the residential and commercial developments along that axis will have been built at about the same time. This has resulted in each district on this north/south axis feeling the impact of growth at different rates. For example, the areas closer to downtown Miami complain of deteriorating infrastructure and the need to widen roads. In contrast, those of the fringes of west Miami-Dade County uniformly complain of the lack of infrastructure and the need to build roads.

In contrast, those of the fringes of west Miami-Dade County uniformly complain of the lack of infrastructure and the need to build roads. Now

because the primary economic, and job centers in the county, the airport, downtown, Coral Gables, downtown Miami, and the seaport, they are all generally located in the eastern parts of the county.

Those residents in the eastern portion of the county generally have much shorter commutes than those in the burgeoning western portions of the county. Therefore, when creating a redistricting plan for Dade County, we recognized these trends and as such we drew seats that run primarily north and south. We also attempted to maintain the core of existing districts where possible and where it would not repeat the mistakes that occurred back in 1992. And, also, where possible, we used major north/south transportation thoroughfares, such as the Palmetto Expressway, I-95, I-75, and the Florida Turnpike, as natural geographic boundaries to divide the districts.

Spkr.Ex. 63, 3-5-02 House Floor Debate at P67-69:L14-9 (Rep. Rubio).

89-A. The Court makes no finding whether the choices made by the Legislature reflected the testimony received at the public hearings or even whether the Legislature was required to consider that testimony during its deliberations. The Court further makes no finding that the choices made by the Legislature during redistricting were the “best” choices that could have been made. Indeed, that is not the Court’s function in these proceedings, because these are precisely the type of decisions that are inherently within a legislature’s province and which should not be reversed by the Court absent compelling circumstances. *See, e.g., Chapman v. Meier*, 420 U.S. 1, 27 (1975).

*The Enacted Plans and Pre-Clearance under § 5 of the Voting Rights Act*

90. On March 22, 2002, the Legislature passed House Joint Resolution 1987, thereby establishing the lines for Florida’s 120 House Districts and 40 Senate Districts. SAC at ¶ 63; Speaker’s Answer at ¶ 63; President’s Answer at ¶ 63.

91. The maps and statistics for the legislative plan are set forth in Speaker’s Exhibit 162, “Plan H062H001 Census and Election Statistics (House)”; Speaker’s Exhibit 163, “Plan H062H001 Census and Election Statistics (Senate)”; Speaker’s Exhibit 135,

“Notebook of District-by-District Analyses of House Districts 1-120”; Martinez.Ex. 77-C.

92. On March 27, 2002, the Governor signed into law House Bill 1993, establishing the lines for Florida’s 25 Congressional districts. SAC at ¶ 62; Speaker’s Answer at ¶ 62; President’s Answer at ¶ 62.

93. The maps and statistics for the enacted congressional plan are set forth in Speaker’s Exhibits 68 & 69, “Maps, statistics, FREDS file of Plan S19C0017 and individual districts in plan.”

94. The districts in the congressional plan have populations of either 639,295 or 638,296 persons. *See* Maurer.Ex. 1 at 57-81.

95. By letter dated April 29, 2002, in accordance with § 5 of the Voting Rights Act, 42 U.S.C. § 1973c, the Governor, the Speaker, and the President submitted the congressional plan and the Speaker and the President submitted the state legislative plan to the United States Department of Justice for pre-clearance pursuant to § 5. *See* Spkr.Ex. 79.

96. On May 3, 2002, the Florida Supreme Court issued its opinion validating the legislative districts under the specific standards of the Florida Constitution and limited review of applicable principles arising under the United States Constitution. *See In re Constitutionality of House Joint Resolution 1987*, 2002 WL 832612 (Fla. S. Ct. May 3, 2002). In its opinion, the Florida Supreme Court found that “the maximum percentage deviation between the largest and smallest number of people per [House district] (statistical overall range) is 2.79%.” *Id.* at \*2. The Florida Supreme Court thus held that “the Legislature has achieved a mathematical preciseness in the districts that complies

with the equal protection requirements of both the Florida and United States Constitutions.” *Id.* at \*3.

97. On May 14, 2002, the Attorney General filed suit in the United States District Court for the District of Columbia, initiating the case styled *Florida v. United States*, Case No. 1:02 CV 00941 (“D.C. District Court Action”), initially asking for a declaration regarding the validity under § 5 of the Voting Rights Act and then amending his complaint to request a declaration of validity. *See* The Speaker’s Notice of Filing Document in *Florida v. United States*, Case No. 1:02 CV 00941 (Three-Judge Court) [*etc.*] [D.E. 186] at Tab A, United States’ Memorandum in Response to Plaintiff’s Request for Rule 16 Conference and For Shortened Time to Answer; In response to Request by Proposed Intervenors for Temporary Restraining Order; and in Support of United States’ Motion to Stay Action at 1-2.

98. On May 15, 2002, Martinez plaintiffs Warren, Holmes, and SVREP, along with Rep. Hastings and the UNO Federation for Community Services, Inc., moved to intervene as plaintiffs into the D.C. District Court Action. *See id.* at 3. Among the claims raised, these Martinez plaintiffs raised the same claim as they raised in Count XV of the Martinez Plaintiffs’ SAC, *i.e.*, that the § 5 submissions by the Governor, the Speaker, and the President were improper because the submissions were not done by the Attorney General. *See* SAC at ¶¶ 176-179. On May 28, 2002, the court granted their motion to intervene, but aligned them as defendants. *See* Order dated May 28, 2002.

99. On May 24, 2002, Deutsch Intervenors Deutsch, Grace, Totino, Johnson, Lobben, Mayeri, Nachimson, and Rizzo moved to intervene in the D.C. District Court Action as defendants. *See* Motion to Intervene as Defendants, filed May 24, 2002.

100. On May 29, 2002, the Governor, the Speaker, and the President moved to intervene in the D.C. District Court Action as plaintiffs. *See* Plaintiffs' Notice of Filing Various Documents Submitted by Senate President John McKay, Speaker Tom Feeny and Governor Jeb Bush to the United District Court for the District of Columbia in the Matter of *State of Florida v. United States* [D.E. 246].

101. On June 4, 2002, the court granted the motions to intervene filed by the Governor, the Speaker, and the President and by the intervening Deutsch Intervenors, aligning the Governor, the Speaker, and the President as plaintiffs and these Deutsch Intervenors as defendants. *See* Order dated June 4, 2002.

102. On June 7, 2002, the United States Department of Justice pre-cleared the congressional redistricting plan, stating that the Attorney General "does not interpose any objection" to the plan. *See* The Speaker's Notice of Filing Documents in *Florida v. United States*, Case No. 1:02 CV 00941 (Three-Judge Court) [*etc.*] [D.E. 269] at Tab A. By directing the letter to the Governor, the Speaker, and the President, the Department of Justice recognized that the submission of the congressional plan by the these Florida officials did not constitute a change in voting procedure that was required to be pre-cleared pursuant to § 5.

103. On June 7, 2002, the Governor, the Speaker, and the President moved on an emergency basis to dismiss the D.C. District Court Action as moot. *See* The Speaker's Notice of Filing Documents in *Florida v. United States*, Case No. 1:02 CV 00941 (Three-Judge Court) [*etc.*] [D.E. 269] at Tab B.

104. On June 10, 2002, the United States also moved to dismiss the D.C. District Court Action as moot. *See id.* at Tab D.

105. On June 13, 2002, the three-judge court empanelled to address the issues raised in *Florida v. United States* granted the motions to dismiss filed by the United States, the Governor, the Speaker, and the President, and dismissed all pending claims as moot. See The Speaker's Notice of Filing Document in *Florida v. United States*, Case No. 1:02 CV 00941 (Three-Judge Court): United States' Memorandum Opinion and Order [D.E. --] at Tabs A & B.

106. By virtue of the dismissal, the D.C. District Court rejected the claim raised by the intervening Martinez plaintiffs that the submission of the congressional plan by the Governor, the Speaker, and the President constituted a change in voting procedure that was required to be pre-cleared pursuant to § 5. Accordingly, the dismissal includes the claim raised in Count XV of the Martinez Plaintiffs' Second Amended Complaint; therefore, this constitutes an adjudication of the issue of whether the submission by the Governor, the Speaker, and the President was proper under § 5 and a finding that the submission was proper.

107. In addition, in response to questioning by the Court, Guthrie testified that the Open Primary Amendment had been pre-cleared and that the state legislative term limits had been pre-cleared, but that he did not know whether the suspension of run-offs was pre-cleared. Trans. at P2211:L9-18.<sup>15</sup>

---

<sup>15</sup> In view of the Court's inquiry, the Speaker has supplemented the record The Speaker's Notice of Filing (i) February 26, 2002, Letter Preclearing the Open Primary Amendment to the Florida Constitution; and (ii) August 17, 2001, Letter Preclearing Suspension of Primary Run-Offs [D.E. --], filing the pre-clearance letters from the Department of Justice establishing that the Open Primary amendment to the Florida Constitution was pre-cleared by letter dated February 26, 1999, and that the suspension of the run-offs was pre-cleared on August 17, 2001. The Speaker has requested the pre-

**THE MARTINEZ PLAINTIFFS' CHALLENGED DISTRICTS**

108. The Martinez Plaintiffs bring specific challenges against three congressional districts—CD 3, CD 17, and CD 23—in Count IV (CD 23), Count V (CD 17), and Count XII (CD 3); seven House districts—HD 15, HD 39, HD 94, HD 103, HD 108, HD 109, and HD 118<sup>16</sup>—in Count VI (HD 15), Count VII (HD 39), Count VIII (HD 94), and Count IX (HDs 103, 108, 109, 118); and, two Senate Districts—SD 1 and SD 18—in Count X (SD 1) and Count XI (SD 18).

*Congressional District 3*

109. Newly enacted CD 3 extends from the urban core of Jacksonville to Gainesville to Orlando. The district maintains 71.4 percent of the core of the prior CD 3. Spkr.Ex. 66 at Tab 3.

110. The statistics on CD 3 are set forth in Spkr.Ex. 68 at “Proposed Congressional District 3 (Plan S19C0017).” A full description of CD 3 is found in Spkr.Ex. 66 at Tab 3.

111. Briefly, the demographic breakdown of prior CD 3 is as follows:

<b>Total Population (2000 Census)</b>	586,684	100.00%
Single-Race Non-Hispanic White	243,710	41.50%
Non-Hispanic Black (including multirace)	294,606	50.20%
Hispanic Black (including multirace)	3,577	0.60%
Hispanic (excluding Hisp Black)	30,333	5.20%

---

clearance letter on the term-limits question, but due to the near-decade time since pre-clearance was obtained on that issue, that particular document has proven elusive.

<sup>16</sup> The Court notes that none of the Martinez Plaintiffs’ challenged House districts are in Florida’s Voting Rights Act § 5 counties (Hardee, Hendry, Hillsborough, Collier, and Monroe). Therefore, the absence of § 5 preclearance of the House Plan by the Department of Justice does not prohibit the Court from going to judgment on the Martinez Plaintiffs’ Claims.

Non-Hispanic Other (none of the above)	14,458	2.50%
<b>Voting Age Population (2000 Census)</b>	421,246	100.00%
Single-Race Non-Hispanic White	193,762	46.00%
Non-Hispanic Black (including multirace)	194,445	46.20%
Hispanic Black (including multirace)	2,106	0.50%
Hispanic (excluding Hisp Black)	20,331	4.80%
Non-Hispanic Other (none of the above)	10,602	2.50%

See Spkr.Ex. 81.

112. The demographic breakdown of newly enacted CD 3 is as follows:

<b>Total Population (2000 Census)</b>	639,295	100.00%
Single-Race Non-Hispanic White	245,424	38.40%
Non-Hispanic Black (including multirace)	323,579	50.60%
Hispanic Black (including multirace)	5,125	0.80%
Hispanic (excluding Hisp Black)	46,164	7.20%
Non-Hispanic Other (none of the above)	19,003	3.00%
<b>Voting Age Population (2000 Census)</b>	458,233	100.00%
Single-Race Non-Hispanic White	198,026	43.20%
Non-Hispanic Black (including multirace)	211,592	46.20%
Hispanic Black (including multirace)	3,023	0.70%
Hispanic (excluding Hisp Black)	31,505	6.90%
Non-Hispanic Other (none of the above)	14,087	3.10%

See Spkr.Ex. 81.

113. For the last ten years, Congressional District 3 has been represented by Congresswoman Corrine Brown, an African-American.

114. The Martinez Plaintiffs' primary expert, Dr. Lichtman, testified that "there is no indication of retrogression between old CD 3 and new CD 3, . . ." Trans. at P346:L11-12. Moreover, Dr. Lichtman testified that

because neither under the old district or under the new district would you get a projected vote that would produce a reasonable victory for an African-American candidate of choice of African-American voters. In both -- under the old and in the new, the voting strength of African-

Americans isn't great enough in the open primary scenario to enable an African-American candidate to have to have a reasonable opportunity to prevail.

Trans. at P515:L18-25.

115. However, according to Dr. Lichtman, "[i]n Congressional District 3, you would predict a Black candidate to prevail in old or the new under a closed democratic primary, but not by a wide margin." In fact, Dr. Lichtman testified that his "prediction of newly-enacted Congressional District 3 is that the Democrat will win with 67.88 percent [of the vote]." *Id.* at P657:L4-7. Dr. Lichtman further testified that he "did not say Congressional District 3 was packed." *Id.* at P662:L19.

#### *Congressional District 17*

116. Newly enacted CD 17 is centered in north-central Miami-Dade County, including parts of south central Broward. In the 2002 redistricting, the district lost its "kite tail," a low growth group of historically Black neighborhoods that stretch along U.S. 1 into South Miami-Dade County, including the Black Grove, South Miami, Richmond Heights, Goulds, Homestead and Florida City. In their place, neighborhoods in rapidly growing southeastern Broward County were added, including Hallandale, Hollywood, Pembroke Pines, Miramar, Carver Ranches, and Miami Gardens. Spkr.Ex. 75-1 at 55. A full description of CD 17 can be found in Spkr.Ex. 66 at Tab 17.

117. The demographic breakdown of prior CD 17 is as follows:

<b>Total Population (2000 Census)</b>	577,167	100.00%
Single-Race Non-Hispanic White	57,341	9.90%
Non-Hispanic Black (including multirace)	351,172	60.80%
Hispanic Black (including multirace)	14,858	2.60%
Hispanic (excluding Hisp Black)	143,164	24.80%
Non-Hispanic Other (none of the above)	10,632	1.80%

<b>Voting Age Population (2000 Census)</b>	399,575	100.00%
Single-Race Non-Hispanic White	45,833	11.50%
Non-Hispanic Black (including multirace)	229,449	57.40%
Hispanic Black (including multirace)	10,424	2.60%
Hispanic (excluding Hisp Black)	106,044	26.50%
Non-Hispanic Other (none of the above)	7,825	2.00%

See Spkr.Ex. 68.

118. The demographic breakdown of newly enacted CD 17 is as follows:

<b>Total Population (2000 Census)</b>	639,296	100.00%
Single-Race Non-Hispanic White	117,783	18.40%
Non-Hispanic Black (including multirace)	369,868	57.90%
Hispanic Black (including multirace)	13,765	2.20%
Hispanic (excluding Hisp Black)	121,569	19.00%
Non-Hispanic Other (none of the above)	16,311	2.60%

<b>Voting Age Population (2000 Census)</b>	451,868	100.00%
Single-Race Non-Hispanic White	97,126	21.50%
Non-Hispanic Black (including multirace)	243,379	53.90%
Hispanic Black (including multirace)	9,470	2.10%
Hispanic (excluding Hisp Black)	90,043	19.90%
Non-Hispanic Other (none of the above)	11,850	2.60%

119. For the last ten years, Congressional District 17 has been represented by Congresswoman Carrie Meek, an African-American.

120. Dr. Lichtman, the Martinez Plaintiffs' primary expert, testified that, in his view, "there was not evidence of voter dilution in this district." Trans. at P478:L12-13. In fact, Dr. Lichtman believes that "the incumbent Democrat, whether it's Miss Meek or another candidate, would win the general election." *Id.* at P657:L18-20. In addition, Dr. Lichtman "did not find that Congressional District 17 was packed." *Id.* at P662:L23-24.

121. Dr. Kevin Hill, one of the Speaker's experts testified that newly enacted District 17 is certainly likely to vote in November for a Black candidate, 80 percent of the voters will be predicted to do that; and there's 79 percent, 79 percent of the voters will be

expected to vote for a Black -- I mean for a Democrat. So, that's why I have Black Democrat, it should be black/Democrat, you know, same thing, obviously." Trial Transcript at 1127, line 21 to 118, line 1. Hill further testified that newly enacted CD 17 performs to allow the Black community to elect its candidate of choice in both primaries and general elections. P1152 L16-22.

122. Cardenas, Chairman of the Republican Party of Florida, testified that "Carrie Meek's seat [is] just a solid African-American seat, but also a solid Democratic seat. And we're -- we don't believe a Republican candidate's viable there." Trans. at P982:L1-4.

123. The Martinez Plaintiffs Exhibits 91-A and 91-B demonstrate that in the 23 statewide elections since 1992, the Democratic candidate has won every single election in both former CD 17 as well as in new CD 17.

*Congressional District 23*

124. Newly enacted CD 23 takes in portions of Broward, Palm Beach, Martin, Hardee, St. Lucie and Okeechobee Counties. A full description of CD 23 can be found in Spkr.Ex. 66 at Tab 23.

125. The demographic breakdown of prior CD 23 is as follows:.

<b>Total Population (2000 Census)</b>	618,766	100.00%
Single-Race Non-Hispanic White	167,875	27.10%
Non-Hispanic Black (including multirace)	357,236	57.70%
Hispanic Black (including multirace)	6,283	1.00%
Hispanic (excluding Hisp Black)	74,808	12.10%
Non-Hispanic Other (none of the above)	12,564	2.00%
<b>Voting Age Population (2000</b>	438,628	100.00%
Single-Race Non-Hispanic White	140,874	32.10%
Non-Hispanic Black (including multirace)	232,329	53.00%
Hispanic Black (including multirace)	3,876	0.90%
Hispanic (excluding Hisp Black)	52,397	11.90%
Non-Hispanic Other (none of the above)	9,152	2.10%

See Spkr.Ex. 81.

126. The demographic breakdown of newly enacted CD 23 is as follows:

<b>Total Population (2000 Census)</b>	639,295	100.00%
Single-Race Non-Hispanic White	187,639	29.40%
Non-Hispanic Black (including multirace)	348,779	54.60%
Hispanic Black (including multirace)	6,158	1.00%
Hispanic (excluding Hisp Black)	81,167	12.70%
Non-Hispanic Other (none of the above)	15,552	2.40%
<b>Voting Age Population (2000 Census)</b>	459,315	100.00%
Single-Race Non-Hispanic White	160,696	35.00%
Non-Hispanic Black (including multirace)	226,513	49.30%
Hispanic Black (including multirace)	3,761	0.80%
Hispanic (excluding Hisp Black)	56,993	12.40%
Non-Hispanic Other (none of the above)	11,352	2.50%

127. For the last ten years, Congressional District 23 has been represented by Congressman Alcee Hastings, an African-American.

128. New CD 23 substantially retains the core of former CD 23. *See, e.g.*, Spkr.Ex. 66 at Tab 23; Trans. at P577:L17-21 (Lichtman).

129. Rep. Hastings lives at 8528 Long Acre Drive, Hollywood, Florida. Trans. at P2134:L23. This address is within both former and new CD 23; in new CD 23, it is

within the finger at the bottom of the district extending east through Century Village to capture Rep. Hastings home within his district. *See id.* at P2136:L1-10; Senate Exs. 1A-1B. In fact, during the floor debate on the congressional plan proposed by Sen. Latvala—Chair of the Congressional Subcommittee of the Senate Redistricting Committee—and subsequently enacted (S19C0017), Sen. Latvala states that “one of [the] last amendments . . . replaced that incumbent back into his district, we had inadvertently removed him from his district, so we did a special amendment the other day that Senator Miller initially introduced to make sure that that Congressman resides in his district.” Sen.Ex.45, 3-19-02 Senate Floor Debate at P18:L18-24.

130. The senator to whom Sen. Latvala referred is an African-American Democrat, Sen. Lesley Miller, Jr.. The congressional redistricting plan introduced by Sen. Miller on March 18, 2002 (S21C004), contains the proposal for CD 23 that was enacted in the adopted plan, including the arm extending through Century Village to capture Rep. Hastings’ home. *Compare* Spkr.Ex. 80-4 at “Proposed Congressional District 23 (Plan S21C0014)” *with* Spkr.Ex. 69 at “Proposed Congressional District 23 (Plan S19C0017).”

131. During the Senate floor debate on the new congressional plan, Sen. Latvala further explained why CD 23 was configured as it was: “The district is configured to maintain its core constituencies in Palm Beach and Broward Counties. It retains over 68 percent of its current residents, it continues to be a strong African-American district with over a 49 percent African-American voting age population. It continues to be a strong Democratic district at 65 percent Democratic and its unusual shape is necessary to include the current incumbent and to protect the neighboring

incumbent in proposed Congressional District 22.” Sen.Ex.45, 3-19-02 Senate Floor Debate at P18-19:L25-11.

132. Similarly, in the House floor debate, Rep. Diaz-Balart—Chair of the Congressional Subcommittee of the House Redistricting Committee—also explained the configuration of CD 23: “In District 23, minor alterations were made, including further alterations for incumbency protection purposes to accommodate Congressman Alcee Hastings, who currently represents this district. This district was altered to include the Congressman’s residence of record in the district. Accordingly, . . . changes were made to Districts 17, 20, and 21 to adjust to the accommodations that we made in District 23 that I just mentioned.” Spkr.Ex. 65, 3-22-02 House Floor Debate at P9:L15-23.

133. Every witness who testified on the subject stated that Rep. Hastings was a virtual lock to be re-elected in CD 23. Cardenas, the Chairman of the Republican Party of Florida, testified that he does not “believe that that’s a feasible district for a Republican of any ethnicity or color to have a chance to win. That’s a solid African-American democratic seat, from my standpoint. . . . I base that on the fact that Alcee Hastings’ numbers have been much stronger than Corrine Brown. He’s a stronger candidate, does very well. The district, demographically, performs better for him or any other Democrat[]; and, frankly, I don’t think we’d look at that seat at all.” Trans. at P981:L15-25.

134. Similarly, Rep. Deutsch testified that “it would be very, very difficult for anyone to beat him,” including Rep. Lois Frankel in a primary contest, and that the only question with respect to CD 23 performing as an African-American district would arise “post-Alcee Hastings.” Trans. at P1774-75:L16-20.

135. In his May 20, 2002 report, Dr. Lichtman asserted that CD 23 will not perform to elect the candidate of choice of Black voters. He based his opinion on polarization estimates contained in table 4 of the Moreno Hill Report (Spkr.Ex. 75-1 at Table 1) and applying that result to turnout estimates from the 1998 Attorney General Democratic primary and the 1998 Governor's general election. Using those estimates and applying them to an open primary in CD 23, Lichtman estimated that a Black candidate would receive 51.3 percent of the vote in former CD 23, but only 48.0 percent in new CD 23. Martinez.Ex. 80 at 17, Table 3. Further, Lichtman calculated, based upon regression estimates of voting in the 1992 CD 23 Democratic primary and the turnout estimates from the 1998 Attorney General Democratic primary and the 1998 Governor's general election that a Black candidate would barely win in former CD 23, but would have lost in new CD 23. *Id.* at 20, Tables 4 and 5.

136. At trial in this matter, Lichtman testified that he found evidence of both retrogression and vote dilution in CD 23. P272 L7-12. However, using Table 5S, Lichtman testified that in an closed primary, using regression estimates from the 1992 Democratic primary and the 1998 Democratic primary turnout, that Black voters would split their votes between three Black candidates and that a white candidate could come in first, although failing to gain a majority of Democratic votes. P322 L12 to P325 L4. Using Tables 6 and 7S, Lichtman admitted that using Hill's racial voting and turnout estimates, both old CD 23 and new CD 23 will elect a Black candidate of choice. Trans. at P328:L12-19 & P330-31:L21-11.

137. Dr. Kevin Hill, one of the Speaker's experts, testified that Lichtman's methodology was flawed by using the regression estimates of polarized voting from one

election and the turnout estimates from another election. Rather than mix the regression results from one election with the turnout estimates from another election held six years later, Dr. Hill performed regression and turnout analysis of seventeen South Florida elections. P1111 L6-9.

137-A. Dr. Hill's original report analyzed CDs 17, 18, 21, and 25. In doing his analysis, Dr. Hill estimated polarization of elections which occurred in 1998 and 2000 in Miami-Dade, Broward, Palm Beach, and Collier Counties. Dr. Lichtman incorporated Dr. Hill's analysis for Broward County into his analysis of CD 23. See *Martinez*.Ex. 80 at 14 (Table 1) & 17 (Table 4).

137-B. In his Rebuttal Report, Dr. Hill noted that:

In our initial report, we did not analyze Congressional District 23. We do so here for purposes of rebutting Professor Lichtman's assertions – partially based on a misuse of our polarization estimates – that CD 23 will not perform for a Black candidate of choice.

*Spkr*.Ex. 75-2.<sup>17</sup>

138. Dr. Hill examined eight different election scenarios and presented them in Table R1 of his Rebuttal Report. Under each of the scenarios, the Black candidate of choice wins in new CD 23.<sup>18</sup> *Trans.* at P1178-88:L5-25.

---

<sup>17</sup> Curiously, notwithstanding that Dr. Lichtman expressly relied on Dr. Hill's turnout estimates in his analysis of CD 23, the Martinez Plaintiffs subsequently chose to challenge Dr. Hill's numbers on the basis that his numbers were based on Broward County-wide elections, and only a portion of Broward County is contained in new CD 23. However, given Dr. Lichtman's express reliance on Dr. Hill's polarization and turnout estimates, the Martinez Plaintiffs' sudden methodological concerns—not supported by any expert testimony—carry little weight in the Court's analysis.

<sup>18</sup> The eight scenarios in Table R1 are:

139. The Democratic primary in CD 23 will be closed in 2002 because of the qualification of a write in candidate. Trans. at P1156:L23-25. In 1998, prior to the adoption of Florida's open primary law (see discussion below), there were only three write-in candidates for Congress in Florida. After the effective date of the open primary law, the number of write-ins increased to 30. Trans. at P1154:L1-20, P1160-61:L17-11.

140. The Court finds that Dr. Lichtman's estimates, should not be given much, if any, weight as his analysis is founded upon (i) a comparison of regression estimates for the 1992 CD 23 Democratic primary and the 1998 turnout figures in another election, (ii) the occasion of an open primary which will not occur in 2002. In addition, based on the evidence presented at trial, the open primary situation central to Dr. Lichtman's analysis is not likely to occur given the relative ease with which a primary may be closed in Florida.

- 
1. Open, decisive September primary using September turnout and polarization estimates for South Florida from Table 4, Defendant's Moreno/Hill report
  2. Open, decisive September primary using turnout and polarization figures from actual September 1992 CD 23 primary
  3. Open, decisive September primary using turnout and polarization figures from actual October 1992 CD 23 runoff
  4. Closed September primary using turnout and polarization figures from actual September 1992 CD 23 primary
  5. November general election using turnout and polarization figures from actual November 1992 CD 23 general election
  6. November general election using turnout and polarization figures from actual November 2000 CD 23 general election
  7. November turnout and polarization using estimates for South Florida from Table 4, Defendant's Moreno/Hill report
  8. Partisan and incumbency regression produced by Prof. Lichtman at 5/24/02 Deposition (Senate Exhibit 1, page 4, line 138)

Speaker's Exh. 75-2, Table R1.

140-A. The Court further notes that Dr. Lichtman admitted that the “competitive range” for elections is between 45 and 55 percent. Trans. at P663:L6-21. Although testifying as to partisan gerrymandering, there is no evidence that the “competitive range” for purposes of a partisan gerrymandering claim differs from the “competitive range” for purposes of a § 2 analysis. Accordingly, under Dr. Lichtman’s own understanding of the “competitive range,” Dr. Lichtman’s findings with respect to new CD 23 fall within Dr. Lichtman’s “competitive range.”

140-B. In addition, the Court notes that every expert that testified on the issue opined that analysis of any election in which an incumbent was running would require that an incumbency “bump” be added to the equation to reflect the impact of incumbency on the expected performance of the district. For example, Dr. Lichtman testified that the impact would be approximately plus 9% “if it is a Democratic incumbent” for “any seat,” Trans. at P468:L8-12, and Dr. Stanley testified that the range was between 6-10%, *id.* at P2108:L15-21.

141. Significantly, the Martinez Plaintiffs Exhibits 91-A and 91-B demonstrate that in the 23 statewide elections since 1992, the Democratic candidate has won every single election in both former CD 23 as well as in new CD 23.

142. The Court credits the analysis done by Professor Hill, who based his analysis on a range of seventeen elections and performed his regression analysis in accordance with generally accepted political science methodologies.

#### *House District 15*

143. HD 15 encompasses the downtown Jacksonville area. A full description of HD 15 can be found in Spkr.Ex. 135 at Tab 15.

144. The demographic characteristics of prior HD 15 are as follows:

<b>Total Population (2000 Census)</b>	103,428	100.00%
Single-Race Non-Hispanic White	32,618	31.50%
Non-Hispanic Black (including multirace)	66,216	64.00%
Hispanic Black (including multirace)	637	0.60%
Hispanic (excluding Hisp Black)	2,110	2.00%
Non-Hispanic Other (none of the above)	1,847	1.80%
<b>Voting Age Population (2000 Census)</b>	74,237	100.00%
Single-Race Non-Hispanic White	27,002	36.40%
Non-Hispanic Black (including multirace)	43,955	59.20%
Hispanic Black (including multirace)	385	0.50%
Hispanic (excluding Hisp Black)	1,513	2.00%
Non-Hispanic Other (none of the above)	1,382	1.90%

145. The demographic characteristics of new HD 15 are as follows:

<b>Total Population (2000 Census)</b>	131,954	100.00%
Single-Race Non-Hispanic White	46,979	35.60%
Non-Hispanic Black (including multirace)	77,346	58.60%
Hispanic Black (including multirace)	946	0.70%
Hispanic (excluding Hisp Black)	3,501	2.70%
Non-Hispanic Other (none of the above)	3,182	2.40%
<b>Voting Age Population (2000 Census)</b>	94,666	100.00%
Single-Race Non-Hispanic White	38,354	40.50%
Non-Hispanic Black (including multirace)	50,982	53.90%
Hispanic Black (including multirace)	554	0.60%
Hispanic (excluding Hisp Black)	2,460	2.60%
Non-Hispanic Other (none of the above)	2,316	2.40%

146. For the last ten years, HD 15 has been represented by an African-American.

147. Dr. Gordon G. Henderson, who has testified in numerous voting rights cases, was accepted as an expert redistricting and election analysis. Dr. Henderson criticized Dr. Lichtman's analysis on several grounds. Specifically, Dr. Henderson wrote in his report that:

Lichtman asserts that District 15 dilutes votes of Black voters in District 15. Lichtman only examines one race, a congressional primary that took place a decade ago but he does not use turnout data from that same election. Instead, he uses turnout figures from 1998. Not only that, he does not use turnout figures from individual elections but uses a mean. Means can be slippery things because they can hide a significant range of values. One of the most interesting results of a standard analysis of racially polarized voting is the range reported in voter choice and in turnout from election to election, all of which is submerged when those data are expressed as a mean. None of Lichtman's analysis can be considered standard analytical procedure for the study of racially polarized voting. Reports of polarized voting going back to Bernard Grofman's analysis in Gingles report support for candidates by voters of different races one election at a time with estimates of turnout and voter choice limited to each election, the same election, and conclusions drawn from a survey of the results of those individual elections – results which often vary a good deal from election to election. Calculating polarization estimates using data on voter choice from one election with turnout figures from another election is an invitation to error. Lichtman might have studied individual elections but instead chose a method so different from what is usually done that I believe his results and conclusions are suspect.

Spkr.Ex. 75-4, Henderson Report at 2. *See also* Trans. at 1014.

148. Dr. Henderson performed double equation regression analysis of voting in the prior HD 15 and newly enacted HD 15 for three 2000 general elections: the Presidential, U.S. Senate, and Commissioner Education. Henderson Report at 3. In addition, Henderson examined the result of the 2000 Democratic primary for Commissioner of Education. He used the results of the 2000 election, rather than using the 1992 election as Dr. Lichtman did, because using 1992 election data to predict voter behavior in 2002 is a "terrific long shot." Trans. at P1016:L9-15.

149. In the 2000 Presidential election, the overwhelming candidate of choice of Black voters in the old HD 15 was Al Gore, with 106.8 percent of the estimated vote of

Black voters.<sup>19</sup> Gore was also the candidate of choice of Black voters in the new HD 15, with 105.2 percent of the Black vote. In former HD 15, George W. Bush was the candidate of choice of White voters, but in new HD 15, he only received 44.1 percent of the White vote. The regression analysis estimates that in old HD 15, Gore would win with 70.5 percent of the vote, while in new HD 15 Gore would win with 65 percent of the vote. Spkr.Ex. 75-4, Henderson Report at 4, Table 2. *See also* Trans. at P1017-18.

150. Henderson's regression results were similar for his analysis of the 2000 U.S. Senate race between Bill Nelson and Bill McCollum. Nelson was the overwhelming choice of Black voters in the old and new HD 15 and wins the district with over 73 percent of the vote in both the old and new HD 15. Spkr.Ex. 75-4, Henderson Report at 4, Table 3. *See also* Trans. at P1018.

151. Henderson found, using regression analysis of the results of the 2000 general election for Commissioner of Education, that the Black candidate of choice was

---

<sup>19</sup> Dr. Henderson explained results that might be higher than 100 percent and lower than 0 as follows:

In the reports of analyses of elections which follow, the reader will sometimes encounter data which indicates that, for example, more than one hundred percent e.g. 101.3 percent of Black registered voters voted for one candidate and -1.3 percent for the other candidate. These percentages are not to be taken literally. Results such as these most often appear when voting is extremely racially polarized (which is certainly true for many of the contests examined here) and there are differences in the rate of turnout by White and Black voters. Such results are not uncommon having appeared, for example, in one of the earliest uses of regression to analyze racial voting behavior, the analysis performed by Bernard Grofman for *Gingles v. Thornburg*. In reporting the results, most experts either round down from percentages above 100 percent or up from zero percent. I have always chosen to report the actual regression estimates.

Spkr.Ex. 75-4, Henderson Report at 2.

elected in both the old and new HD 15, even though the candidate of choice of White voters was different than the candidate of choice of Black voters. Henderson Report at 5, Table 4. The 2000 Commissioner of Education Democratic Primary between George Sheldon and James Bush found the Black voters' candidate of choice was elected by both Black and White Democratic voters. Spkr.Ex. 75-4, Henderson Report at 5, Table 5.

152. Dr. Henderson concluded that new HD 15 will allow the election of the Black voters' candidate of choice. Trial Transcript at 1026, lines 8-12

153. Dr. Lichtman essentially agrees with Dr. Henderson. Significantly, Dr. Lichtman testified that he examined HD 15 and that he had not "been presented with alternative numbers in terms of Black voter strength for th[is] district[] sufficient to satisfy me at this point that there is any remedy to diminished Black voter strength" in HD 15. Trans. at P271:L23-25. Indeed, Dr. Lichtman's "tests were not fully passed to my satisfaction in the State House districts outside of Miami-Dade," *id.* at P272:L4-6, and that he did not "see a viable alternative" to this district and that none had been presented to him, *id.* at P627:L7-11.

#### *House District 39*

154. HD 39 is located in western and northwestern Orlando in Orange County, Florida. A full description of HD 39 can be found in Spkr.Ex. 135 at Tab 39.

155. For the last ten years, HD 39 has been represented by an African-American.

156. Dr. Lichtman testified that he examined HD 39 and that he had not "been presented with alternative numbers in terms of Black voter strength for th[is] district[] sufficient to satisfy me at this point that there is any remedy to diminished Black voter

strength” in HD 39. Trans. at P271:L23-25. Indeed, Dr. Lichtman’s “tests were not fully passed to my satisfaction in the State House districts outside of Miami-Dade,” *id.* at P272:L4-6, and that he did not “see a viable alternative” to this district and that none had been presented to him, *id.* at P627:L7-11.

157. Although Dr. Henderson differed with Dr. Lichtman’s methodology, he agreed with his conclusion that new HD 39 would elect the Black voters’ candidate of choice. Trans. at P1029L1-4.

#### *House District 94*

158. HD 94 is located in central Broward County. A full description of HD 94 can be found in Spkr.Ex. 135 at Tab 94.

159. For the last ten years, HD 94 has been represented by an African-American.

160. Dr. Lichtman testified that he examined HD 94 and that he had not “been presented with alternative numbers in terms of Black voter strength for th[is] district[] sufficient to satisfy me at this point that there is any remedy to diminished Black voter strength” in HD 94. Trans. at P271:L23-25. Indeed, Dr. Lichtman’s “tests were not fully passed to my satisfaction in the State House districts outside of Miami-Dade,” *id.* at P272:L4-6, and that he did not “see a viable alternative” to this district and that none had been presented to him, *id.* at P627:L7-11.

161. Although Dr. Henderson differed with Dr. Lichtman’s methodology, he agreed with his conclusion that new HD 94 would elect the Black voters’ candidate of choice. Trans. at P1032:L8-14.

*House Districts 103, 108, 109, and 118*

162. House Districts 103, 108, 109, and 118 are all located in Miami-Dade County, Florida. A full description of HD 103 can be found in Spkr.Ex. 135 at Tab 103. A full description of HD 108 can be found in Spkr.Ex. 135 at Tab 108. A full description of HD 109 can be found in Spkr.Ex. 135 at Tab 109. A full description of HD 118 can be found in Spkr.Ex. 135 at Tab 118.

163. The demographic characteristics of both prior and newly enacted HD 103, 108, and 109 are majority Black population and voting age population. Prior HD 118 was not majority Black population or voting age population and new HD 118 is neither majority Black population nor voting age population.

164. For the last ten years, HDs 103, 108, and 109 have been represented by African-Americans.

165. Incumbent Rep. Tee Holloway is running unopposed for re-election in House District 103. *See* Spkr.Ex 181. Rep. Holloway is not a Plaintiff to this action and, in fact, Rep. Holloway voted in favor of the enacted House Plan on March 6, 2002. Spkr.Ex 64-1.

166. The Non-Hispanic Black Voting Age Population in the new House District 103 is 70 percent. *See* Spkr.Ex 162.

167. Plaintiffs allege that the enacted House District 103 is packed, thereby diluting Black voters in the area. *See* SAC at ¶ 129. While Plaintiff's allege packing in House District 103, they fail to allege that the only adjoining House District, 104, is diluted.

168. Incumbent Rep. Bendross-Mindingall is running for re-election in House District 109. *See Spkr.Ex 181.*

169. The Non-Hispanic Black Voting Age Population in the new House District 109 is 60%. *See Spk.Ex 162.*

170. The Martinez Plaintiffs allege that the enacted House District 109 is packed, thereby diluting Black voters in the area. *See SAC at ¶ 130.* They cite to the Black Registered Voter Percentage of the enacted House District 109 (68%) in support of their “packing” allegation. *See Spkr.Ex. 162; SAC at ¶ 128.* However, the Fairness Plan that Martinez Plaintiffs Rep. Lee, Rep. Meadows, Rep. Lerner, and Rep. Bendross-Mindingall voted for on the House floor had a Black Registered Voter Percentage of 71 percent. *See Spk.Ex 80-3-A.*

171. With respect to HDs 103, 104, 109, and 118, Dr. Lichtman testified that he “did not see indications of retrogression in any of those districts.” *Trans. at P627:L16-17.*<sup>20</sup> Dr. Lichtman’s initial report indicates that District 103, 104, and 109 elected the Black voters’ candidate of choice and will continue to do so under the new configuration. *Martinez.Ex. 80 at 34, Table 13.* This report also indicates that while the Black voter candidate of choice did not get elected under the old HD 118, the district now would elect a Black candidate of choice. *Id.*

172. Only new HD 108, under Dr. Lichtman’s analysis, would not perform to elect the Black voter candidate of choice. *Martinez.Ex. 80 at 34, Table 13.* However, the

---

<sup>20</sup> Although Dr. Lichtman includes HD 104 in his analysis, the Martinez Plaintiffs have not included in their Second Amended Complaint a claim that new HD 104 is dilutive of the voting rights of Black voters.

Non-Hispanic Black Voting Age Population in the new House District 108 is 55 percent. *See Spk.Ex. 162.* Alternative District 108 has a 69.01 percent Non-Hispanic Black population. *Martinez.Ex. 77-B*, District Statistics Report at page 3 of 33. Notably, in his discussion of partisan gerrymandering, Dr. Lichtman testified that a district with 68 percent Democrats would be considered “packed.” *Trans at P364:L19-21.*

172-A. Moreover, Alternative District 108 has a black voting-age population of 65.41 percent, *Martinez.Ex. 77-B*, District Statistics Report at page 3 of 33. HD 103 has a black voting age population of just 2.49 percent higher (67.90%). *See Spkr.Ex. 135 at Tab 108.* Significantly, Dr. Lichtman also testified that HD 103 is “packed,” *Trans. at P391:L18-23*, but declines to find that Alternative District 108 is similarly “packed.”

172-B. The Martinez Plaintiffs’ witness Fernandez testified that the “Little Haiti” portion of Miami-Dade County is located in the northeast section of Miami and that North Miami or North Miami Beach would be considered part of Little Haiti. *See Trans. at P689:L14-20.*<sup>21</sup> HD 108 lies in the heart of Little Haiti. *See Spkr.Ex. 135 at Tab 108; see also Spkr.Ex. 150 (“Wall Map, State of Florida, HJR 1987, District 108”).*

172-C. Dr. Hill testified that increasing the number of Blacks in the district would bring additional African-Americans (*i.e.*, non-Haitian Blacks) into the district. *Trans. at P1462:L1-20.* As a natural result, the Haitian Black community centered in HD 108 would necessarily be diluted in order to comply with the “one person, one vote” requirement. Furthermore, Dr. Hill agreed that removing Haitians from HD 108 would

---

<sup>21</sup> Specifically, Fernandez defined Little Haiti as “from 163rd in the north to 36th Street, more or less, in the south, I-95 west and Biscayne Boulevard east, that area.” *Id.* at P689-90-L25-3.

have the same effect on the Haitian community that the Martinez Plaintiffs asserted had occurred with respect to Non Cuban Hispanics. *Id.* at P1462:L19-23<sup>22</sup>

172-D. Dr. Hill further testified that one of the unique factors about HD 108 is that many Haitians are non-citizens, but that the non-citizens are naturally expected to become citizens and register to vote. Trans. at P1349-50:L20-3. Thus, the Legislature faced a trade-off between retaining the Haitian community-of-interest in HD 108 and increasing the Black registered voter percentage above 45 percent. Doing both was not an available alternative, because to increase the Black registered voter percentage above the starting 45 percent in HD 108 while retaining the Haitian community-of-interest in that district, “you would have to include a lot more blacks in this district than you would in

---

<sup>22</sup> The Court notes that in *Celestine v. Miami-Dade County*, Case No. 02-20380-CIV-HIGHSMITH (filed February 2, 2002), the plaintiffs contend, *inter alia*, that Miami-Dade County’s reapportionment of County Commission districts, which split the Haitian community of which HD 108 is comprised into four districts, “dilutes minority voting strength of voters of Haitian descent and prevents such citizens from electing representatives of their choice who will be responsive to the needs of their community,” in violation of the Equal Protection Clause and 42 U.S.C. §§ 1981 & 1983. See Speaker’s Notice of Filing Complaint (without exhibits) in *Celestine v. Miami-Dade County* at 14-15.

The plaintiffs in *Celestine* are represented by Norman Powell, Esq., who also represents the Martinez Plaintiffs. Mr. Powell’s assertions in his *Celestine* complaint directly contradict his co-counsel’s assertion at closing argument that the Voting Rights Act does not protect Creole speakers as a language minority group. See Trans. at 2557:L18-25 (Williams).

The Haitian community in HD 108 cannot be deserving of protection under the Equal Protection Clause for purposes of the *Celestine* plaintiffs’ arguments and not deserve such protection in this case, even though it undercuts the Martinez Plaintiffs’ current arguments. In addition, this new contention by the Martinez Plaintiffs’ counsel ignores the fact that the Martinez Plaintiffs specifically assert that Creole speakers are protected under the language provisions of the Voting Rights Act in the Second Amended Complaint. See SAC at ¶¶ 80-81.

the surrounding districts. And then . . . you get into questions of packing.” Trans. at P1345-46:L21-3 (Hill).

173. Rep. Phillip Brutus, who represents HD 108, is the first Haitian-American elected to the Florida House. Trans. at P1343:L6-10. Rep. Brutus is running unopposed for re-election in House District 108. *See* Trans. at P774-75:L25-1 (Lerner); Spk.Ex 181. Significantly, Rep. Brutus is not a plaintiff to this action and, in fact, Rep. Brutus voted in favor of the enacted House Plan on March 6, 2002. *See* Spk Ex 64-1.

173-A. There was a substantial amount of testimony by the Haitian residents of North Miami, Miami Shores, El Portal, and Little Haiti (all of which are in or adjacent to HD 108) at the public hearings requesting continued representation for the Haitian community. *See* Spkr.Ex. 37, Opa Locka October 2, 2001, Public Hearing Transcript, at 24-26, 42-43, 45-47, 57-59, 76, 78, 122-124 & 134-136.

174. Dr. Hill’s report notes that HD 108 will likely perform for the Black candidate of choice in two of three scenarios<sup>23</sup>:

Table R6 does indeed show that House 108 would likely not perform for a black candidate of choice in an extremely unlikely open primary, given the turnout and polarization estimates we have being accurate for a future election in 108. We predict here that, under these turnout and polarization conditions, a black candidate of choice would receive 49.91% of the vote

---

<sup>23</sup> The three scenarios for HD 108 are:

1. Open, decisive September primary using September turnout and polarization estimates from Table 4, initial Moreno/Hill report
2. Closed September primary using September turnout and polarization estimates from Table 4, initial Moreno/Hill report
3. November general election using September turnout and polarization estimates from Table 4, initial Moreno/Hill report

in an open primary in 108. In a closed Democratic primary – a much more likely scenario – we predict 54.93% performance for a black candidate of choice. In a November general election, our estimates predict a 78.14% performance for a black candidate of choice.

Spkr.Ex. 75-2 at 25. Accordingly, only in the unlikely event of an open primary is there even a remote possibility that HD 108 will not perform, and even then the black candidate of choice misses the 50 percent plus mark by just under **one-tenth** of one percent.

174-A. In addition, the performance figure for HD 108 in the open primary scenario falls almost exactly in the middle of the 45 to 55 percent spread that Dr. Lichtman testified constituted the “competitive range” for elections. *See* Trans. at P663:L6-21.

175. Dr. Lichtman testified that, using Dr. Hill’s methodology, that while neither old HD 118 nor new HD 118 elects the Black candidate of choice, the vote for the Black candidate of choice is raised by almost six percent. P389 L1-10. Accordingly, there can be no finding of dilution arising from the fact that new HD 118 does not perform under Dr. Lichtman’s analysis.

176. Moreover, for the last ten years, HD 118, although not having a Black population or a Black voting age population majority, has been represented by an African-American. Incumbent Rep. Edward Bullard is running unopposed for re-election in House District 118. *See* Spkr.Ex 18.

177. Rep. Bullard is not a plaintiff and, in fact, he voted in favor of the enacted House Plan on March 6, 2002. *See* Spkr.Ex 64-1.

178. The Non-Hispanic Black Voting Age Population in the new House District 118 is 42 percent. *See Spkr.Ex 162.* The Non-Hispanic Black Voting Age Population in House District 118 was 30.4 percent when drawn in 1992. *See Spkr.Ex 82.*

179. Plaintiffs allege that the Black Registered Voter Percentage of the enacted House District 118 (47%) should have been at least 50 percent. *See SAC at ¶ 132.* However, the Fairness Plan that Martinez Plaintiffs Rep. Lee, Rep. Meadows, Rep. Lerner, and Rep. Bendross-Mindingall voted for on the House floor had a Black Registered Voter Percentage of only 35 percent. *See Spk.Ex 80-3-A.*

180. Finally, with respect to HDs 103, 104, 109, and 118, Dr. Lichtman testified that he “did not see indications of retrogression in any of those districts.” Trans. at P627:L16-17.

*Senate District 2 and Senate District 21*

181. No evidence was presented on Senate Districts 2 (renumbered SD 1) and SD 21 (renumbered SD 18). *See McKay’s Rule 52 Motion and confirmation by Plaintiffs’ counsel as set forth below.*

**THE ALTERNATIVE PLANS**

182. Neither Maurer nor the Deutsch Intervenors submitted alternative redistricting plans to the Court.

183. The Deutsch Intervenors had proffered an expert, Dr. John Alford, and apparently intended to offer an alternative congressional redistricting plan through Dr. Alford. However, during the trial, counsel for the Deutsch Intervenors announced that Dr. Alford would not be a witness and that they would be relying solely on the Martinez Plaintiffs’ experts. Trans. at P351:L20-24.

184. Maurer intended to rely on Dr. Alford as his expert and, apparently, on an alternative congressional plan to be introduced through Dr. Alford. *See* Maurer's Emergency Motion to Present May 24, 2002 Report, June 2 Written and Video Deposition of Dr. John Alford as a Rebuttal Expert Witness [*Maurer* D.E. --] at ¶¶ 11-13. When Maurer learned that the Deutsch Intervenors were not going to proffer Dr. Alford as an expert and that Dr. Alford would not be appearing at trial, he moved for leave to use Dr. Alford's deposition and expert report in lieu of providing his own expert. *See id.*

185. After objection by defendants' counsel, Maurer and defendants' counsel came to an agreement that only portions of Dr. Alford's report would be admitted at trial (and none of the deposition or the plan), identified as Maurer Ex. 5. *See* Trans. at P1799-800:L16-17.

186. Accordingly, only the Martinez Plaintiffs presented any alternative redistricting plans.

*The Jones Plan—the Congressional Plan Alternative*

187. The Martinez Plaintiffs' alternative congressional plan is called the Jones Plan, after its sponsor, Sen. Daryl Jones. The Jones Plan statewide map and the individual district statistics for the Jones Plan are set forth in the Martinez Plaintiffs' Exhibit 77-A, "Proposed Congressional Districts Plan S40C0012." However, the Martinez Plaintiffs presented no evidence concerning the nature of the Jones Plan.

188. On February 18, 2002, the Jones plan—called the Smith amendment because Rep. Chris Smith was the sponsor in the House—came up for discussion in the House Procedural and Redistricting Council Meeting, the final step before going to the floor of the House to be voted on. At the meeting, Rep. Marco Rubio stated, "I must tell

you, however, sir, that if we were doing a clinic here today on Section 2 violations of the Voting Rights Act, this [the Smith Amendment] would probably be a good example of it.” Spkr.Ex. 61 2-18-02 House Procedural and Redistricting Council Meeting at P124:L5-8. Rep. Rubio then continued on to detail the multiple flaws in the Jones Plan, particularly as to its effect on Hispanics in Miami-Dade County. *See id.* at P124-126:L9-15.

189. Professor Kevin Hill testified at length about the Jones Plan and wrote about it in his Rebuttal Report. Dr. Hill testified that old CD 17 was characterized by a “kite tail” that was retained by the Jones Plan. Trans at P1140-41:L17-20. His analysis was that the kite tail contains 120,000 in total population and 98,626 in voting age population, and the voting age population is broken down as 39.91 percent black, and 39.03 percent Hispanic, and 16.6 percent white. Registered voters in the Jones Plan kite tail are 48.62 percent black, 23.59 percent white, and 23.03 percent Hispanic. *Id.* at P1142-43:L22-10.

190. The configuration of the kite tail in the Jones Plan has a critical effect on whether a third performing Hispanic majority congressional district can be drawn. Drawing the kite tail down U.S. 1 forces District 18 to wrap around it, like a “taco shell.” Trans. at P1143: L18. Having a CD 17 with a kite tail in the Jones plan also prevents CD 25 from having an effective Hispanic majority.

191. The enacted CD 25 has a voting age population of 63.17 percent Hispanic and is expected to elect the Hispanic voters candidate of choice. Trans. at P1145:L2-24. CD 25 in the Jones Plan is 57.11 percent Hispanic. *Id.* at P1146:L10. As Dr. Hill testified:

And we also did the performance prediction on the Jones version of this district in a November election. This is a partisan November election, not a September primary either open or closed. And we've had previous testimony that that's where you look in these districts, which are overwhelmingly Democratic. Well, this district is neither of them, Democratic or Republican, in either one of these plans. Using the same polarization in Table 4 of the Moreno-Hill report, which we used on the Florida Legislative plan and Lichtman used, we find this district will not perform for a Hispanic candidate of choice. We find a prediction of 48.20 percent for a Hispanic candidate of choice in the Jones version of this district.

So what we're left with is two Hispanic performing districts in the Jones version, our prediction, and three Hispanic performing districts in the Florida Legislative version.

Trans. at P1147-48:L18-10.

192. Significantly, the kite tail and its dilutive effect on CDs 18, 21, and 25 in the Jones Plan, Professor Hill testified, are "married to each other."

Q. Okay. Now, can you explain to the Court if there's any connection between keeping the kite tail on 17 and the ultimate configuration of 25 in the Jones plan, or the Congressional fairness plan?

A. They are married to each other, Mr. Cody. They are absolutely married to each other. That's one of the flaws with this plan. That kite tail is presumably, I don't know the motivation of the drawer of this plan, but that kite tail is presumably on there to enhance the Miami-Dade County black voting age population that's in District 17.

But please remember that that kite tail is not only 40 percent black. It's also 40 percent Hispanic. And keeping those 40 percent Hispanics out of 18, 21 and 25, dilutes the Hispanic vote in those districts.

Trans. at P1151-52:L13-1.<sup>24</sup>

---

<sup>24</sup> Significantly, Dr. Hill's testimony on this issue is unrebutted, as the Martinez Plaintiffs chose not to present any rebuttal testimony to Dr. Hill's testimony. *See* Trans. at P2212:L2-3 (Ms. Williams: "[W]e have no rebuttal."). The Court notes that Dr. Lichtman was available to testify in rebuttal if the Martinez Plaintiffs felt he could have rebutted Dr. Hill's testimony (or Dr. Henderson's testimony), since Dr. Lichtman

192-A. Dr. Hill specifically testified that CD 25 in the Jones Plan will not perform to elect an Hispanic. *See* Trans. at P1351:L19-24.

193. Dr. Lichtman did not examine any maps and did not do any analysis with regard to the Hispanic majority Congressional seats. Trans. at P280:L7-12; P334:L1-3.

193-A. Although it was not their burden, the defendants established that the Jones Plan does not constitute an alternative, feasible benchmark system.

*The "Revised Fairness Plan"—the House Plan Alternative*

194. Less than twelve hours before trial of this action was commenced on June 3, 2002, the Martinez Plaintiffs' counsel sent a series of e-mails to the Speaker's counsel, forwarding e-mails of an alternative House redistricting plan. *See* Motion to Strike and for Sanctions [D.E. 224] at 2. This plan was denominated during the trial as the "Revised Fairness Plan." *See* Trans. at P632:L6-18.<sup>25</sup>

195. It is not clear whether the actual Martinez Plaintiffs had any knowledge that an alternative House redistricting plan had been drafted, much less that it was going to be submitted to the Court for consideration. The only plaintiff to testify on this issue was Rep. Cindy Lerner, representative of former HD 119 and an attorney. Trans. at P725:L8-9 & P791:L14.

---

attended almost the entirety of the proceedings before leaving shortly before the end of the last day of trial testimony.

<sup>25</sup> The Speaker and the President moved to strike the Revised Fairness Plan on the grounds of surprise and that receiving the plan on the morning of trial provided them with no ability to analyze it for trial purposes or to depose the progenitor(s) of the plan. Because the delivery of the plan on the morning of trial constituted prejudicial surprise to the defendants and because the plan does not materially assist the Court in its deliberations due to the fact that it does not provide a viable alternative to the enacted House plan, the Court grants the motion to strike.

196. Rep. Lerner testified that she was not aware of the Revised Fairness Plan, that she had no idea where it came from, and, when asked whether she consented to its submission to the Court, that she was not “aware of any of those circumstances.” Trans. at P764-65:L11-4.

197. In fact, when she was asked whether a district containing a 65.5 percent Hispanic voting age population, a 44 percent registered Republican population, and a 34 percent registered Democrat population would offer her a fair opportunity to be elected from such a district, Rep. Lerner testified, “No, it would not allow me a fair chance.” Trans. at P762-63:22-15. Notwithstanding Rep. Lerner’s testimony, however, the area of district 119 in the Revised Fairness Plan contains almost exactly those demographics. *See* Martinez Exh. 77-B at 3 & 18.

198. The House Plan enacted by the 2002 Legislature greatly enhanced the number of minority districts throughout Florida, by creating 13 Districts with a majority Black voting age population and 11 Districts with a majority Hispanic voting age population, for a total of 24 minority majority House Districts. *See* Spkr.Ex. 177. In sharp contrast, the Martinez Plaintiffs’ “Revised Fairness Plan” only creates 10 African-American majority districts with a majority Black voting age population, though creating the same number of Hispanic majority voting age districts.

198-A. Under the adopted plan for the House contained in HJR 1987, a total of 33 districts are solely in or touch Miami-Dade County or Broward County: HDs 87 & 90-120. The total population of these 33 districts is 4,259,091. Of that population, 814,668 (or 19.1 percent) is Non Hispanic Black, and 50,739 (or 1.2 percent) is Hispanic Black. *See* Spkr.Ex. 163 (H062H001 stat pack).

198-B. Out of these 33 Broward and Miami-Dade House districts, six are majority Non Hispanic Black in population and are represented by African-Americans: HD 93--Rep. Smith, HD 94--Rep. Meadows, HD 103--Rep. Holloway, HD 104--Rep. Wilson, HD 108--Rep. Brutus, and HD 109--Rep. Bendross-Mindingall. *See id.* A seventh, HD 118, is also represented by an African-American, Rep. Bullard, though the district is not majority Non Hispanic Black in population. *See id;* *see also* Speaker's Request for Judicial Notice and Notice of Filing Official Florida House of Representatives Member Web Pages [D.E. --].

198-C. African Americans representatives, thus, hold 21.2 percent of the total Broward and Miami-Dade County House seats (7 of 33), while the Non Hispanic Black population is 19.1 percent of the same area. In fact, the percentage of African-American seats held exceeds the percentage of Black population even if Hispanic Blacks are included in the total Black population (raising the population percentage to 20.3). Accordingly, Blacks hold a percentage of Broward and Miami-Dade House seats that is proportional to—and, in fact, exceeds—their percentage of the population included in Broward and Miami-Dade House districts.

198-D. The Martinez Plaintiffs' put on no evidence whatsoever that the Revised Fairness Plan comports with any legal requirement. Dr. Lichtman testified that he does not look at maps and that “[m]ap makers draw maps.” Trans. at P280:L7-10. Dr. Webster testified (through deposition) that he first saw the Revised Fairness Plan the afternoon before trial began. Webster Depo. Vol. II-P32:L2-8. He further testified that he was not involved in drawing the plan and that he first found out the plan was being drawn by a “Mr. Landgraf” the Friday before trial began (May 31, 2002). *Id.* at P16:L18-24. No

witness for the Martinez Plaintiffs testified that the Revised Fairness Plan met any legal requirement whatsoever.

198-E. Accordingly, there is no evidence before the Court indicating, much less establishing, that the Revised Fairness Plan constitutes an alternative, feasible benchmark system. Therefore, the Court finds that the Martinez Plaintiffs failed to meet their burden of proof on this issue.

*Neither Evidence Challenging the Senate Plan Nor an Alternative Senate Plan  
Was Presented to the Court*

199. The Martinez Plaintiffs presented no evidence as to Senate redistricting issues or districts whatsoever and did not present an alternative Senate plan. The Martinez Plaintiffs apparently recognized that they had to drop their claims as to the Senate districts—found in SAC Counts X and XI—during the third day of trial, after their expert, Dr. Alan Lichtman, had testified the previous day that he saw no viable alternative to the enacted Senate redistricting plan. *See* Trans. at P274:L2-11.

200. Indeed, as a consequence of their expert's testimony on this point, the Martinez Plaintiffs' counsel and the Court had the following colloquy:

12 JUDGE TJOFLAT: But that plan has -- the Senate  
13 redistricting is not involved in this case.

14 MS. WILLIAMS: Dr. Lichtman did testify about the  
15 Senate plan yesterday.

16 JUDGE TJOFLAT: He's already said that he couldn't  
17 suggest anything about the Senate plan.

18 MS. WILLIAMS: Yes, your Honor --

19 JUDGE TJOFLAT: And so --

20 MS. WILLIAMS: -- that was his testimony.

21 JUDGE TJOFLAT: -- as far as we're concerned, we

22 are concentrating on these House districts and on the  
23 Congressional plan.

24 MS. WILLIAMS: That apparently is what, at least  
25 counsel at the moment is focusing on, yes.

1 JUDGE TJOFLAT: Political gerrymandering in the  
2 Senate?

3 MS. WILLIAMS: I believe that the testimony from  
4 yesterday addressed all three chambers. And Professor  
5 Lichtman said that he had not seen an alternative with  
6 respect to the Senate that addressed the concerns that he  
7 had.

8 JUDGE TJOFLAT: Well, what is left -- what are we  
9 disputing here now? We're disputing the House seats in Dade  
10 County.

11 MS. WILLIAMS: Yes, definitely.

12 JUDGE TJOFLAT: And the Congressional seats that we  
13 have been talking about.

14 MS. WILLIAMS: Yes.

Trans. at P630-31:L 12-14.

201. At no time subsequent to this exchange did the Martinez Plaintiffs present an alternative Senate redistricting plan or any evidence on Senate redistricting.

#### **THE HISPANIC/NON-CUBAN HISPANIC CLAIM**

202. The claim of disparate treatment between Cuban and non-Cuban Hispanics is brought by Martinez, Molina, Vilar, Ruiz, Paez, Rep. Meadows, Rep. Bendross-Mindingall, Rep. Lerner, and SVREP. Martinez is an Hispanic resident CD 21, SD 39 and HD 110; Ruiz is an Hispanic resident of CD 21; Paez is an Hispanic resident of CD 18 and HD 107; Rep. Bendross-Mindingall is a Black resident of former and new CD 17 and former and new HD 109; Rep. Meadows is a Black resident of former and

new HD 94; Molina is an Hispanic resident of CD 18 and HD 119; Lerner a white resident of former HD 119; Vilar is an Hispanic resident of Miami-Dade County, Florida, with no district of residency alleged.

203. CDs 18 and 21 are Hispanic majority VAP districts. *See Maurer.Ex.1* at 74 (CD 18 has a 56.8% Hispanic VAP) & 77 (CD 21 has a 66.2% Hispanic VAP).

204. HDs 107, 109, 110, and 119 are Hispanic majority VAP districts. *See Spkr.Ex. 135* at Tab 107 (HD 107 has a 66.64% Hispanic VAP), Tab 110 (HD 110 has a 79.72% Hispanic VAP), and Tab 119 (HD 119 has a 66.57% Hispanic VAP).

205. HD 94 and HD 109 are majority Black VAP districts. *See Spkr.Ex. 135* at Tab 94 (HD 94 at has a 59.03% Non-Hispanic Black VAP) and Tab 109 (HD 109 has a 56.78% Non-Hispanic Black VAP).

206. SD 39 is an Hispanic majority VAP district.

207. The newly enacted congressional districts do not treat Cubans differently than Hispanics who identify themselves with other heritages or countries of origin. Except for the Miami-Dade County area, persons of Hispanic origin do not live in concentrations or numbers to constitute a majority in a single-member congressional district. In the Miami-Dade area, Cubans have a slight numerical dominance over non-Cuban Hispanics and are slightly more residentially concentrated, but both groups figure prominently in the demographics of the Miami-Dade area and in the three newly created majority Hispanic congressional districts. *Sen.Ex. 59, Stanley Report* at ¶ 30.

208. Dr. Lichtman testified that he was not presented with any alternative plan that was substantially different from the legislatively enacted congressional plan or the

legislative plan respect to the allocation of Cuban and non-Cuban Hispanic into Hispanic and non-Hispanic districts. Trans. at P276-77:L9-13.

209. Martinez' testimony demonstrated that that there are few real differences between Cubans and Non-Cubans. According to Martinez, Cubans and Non-Cubans are similarly concerned with anti-communism (Trans. at P60:L7-9), immigration (*id.* at P64:L12-16), matters of governmental public assistance (*id.* at P64:L19-21), Medicaid and healthcare issues (*id.* at P64-5:L24-1), housing and urban revitalization (*id.* at P65:L2-4), and general language issues (*id.* at P65:L16-19).

210. Fernandez of SVREP testified that "there's issues that affect us all [*i.e.*, all Hispanics]." Trans. at P690:L21-24.

211. Dr. Hill testified that South Florida Hispanics are a cohesive voting group, noting that "Hispanics, as a whole, are politically cohesive based on various ecological regression studies that they "found significant differences between the percentages of Hispanics, the percentages of blacks, and the percentages of whites who vote for certain candidates." Trans. at P1104-5:L23-5.

212. Dr. Hill further testified that the Martinez Plaintiffs attempt to create a dichotomy between Cuban and non-Cuban Hispanics based on Dr. Lichtman's analysis contradicts what his experience and understanding of South Florida's demographics: "Cuban-Hispanics and non-Cuban-Hispanics does not make any sense from a community of interest perspective to [him]." Trans. at P1162:L4-6. In fact, Dr. Hill noted that relevant survey data indicates "that both Cuban and non-Cuban-Hispanics gave Governor Jeb Bush higher marks than non-Latin-whites did or than African-Americans did," and that "Cuban-Hispanics and -- non-Cuban-Hispanics were the only two groups in [his] poll

to give the State Legislature over 50 percent approval rating.” Trans. at P1165-66:L23-16.

213. Hispanics in South Florida generally share exile status. Dr. Hill testified that “not only Cubans, have experienced that in South Florida, being political refugees, people running from left wing governments or violence or thing like that. That describes Nicaraguans; it describes Colombians; it describes a lot of people. There is a quite profound shared – part of the shared community of interest of Hispanics in this part of the country is motivations for coming to the United States that are very much in common as political motivations.” Trans. at P1169:L3-11.

214. In contrast to Dr. Hill’s specific analysis of the issue, Dr. Lichtman testified that he had “not studied that in my report and I have not testified about that, so I have no opinion about that.” Trans. at P435:L13-14. In fact, Dr. Lichtman testified that he does not recall that he “ever specifically analyzed the Cuban-American community, per se. Any analyses I’ve done and I’ve seen others do, looked at Hispanic registered voters as a group . . . . I have typically looked at Hispanics as a group in looking at regression and dilution.” Trans. at P432-33:L25-12.

215. Significantly, Dr. Lichtman also testified that he “was not able to find to this point [...] a plan presented to me that was substantially different with respect to allocation of Cuban and non-Cuban Hispanics into Hispanic and non-Hispanic different districts.” Trans. at P277:L5-8. In fact, Dr. Lichtman conceded that one of the three majority Hispanic Congressional Districts and four of eleven House Districts has a population in which the majority of all Hispanics are Non-Cuban Hispanics. (TR 439).

216. Moreover, the Legislature does not have the ability to draw districts that would distinguish between Cuban and non-Cuban Hispanics. In response to an inquiry from the Court, Guthrie testified that FREDs does not enable a user to determine how many persons in an area were Cuban Hispanics and how many were non-Cuban Hispanics. Trans. at P192:L14-19.

#### **THE PARTISAN GERRYMANDERING CLAIMS**

217. All of plaintiffs' and intervenors' testifying witnesses (all of whom are registered Democrats) testified that they were able to influence the redistricting process or at least discuss redistricting issues with legislative decision-makers.<sup>26</sup>

218. Martinez is a registered Democrat. Trans. at P57:L2-3. Martinez testified that he had "conversations with members of the legislative delegation" during "the process that led up to the development of [the] legislative maps and [the] congressional maps" including "Rep. Garcia, Rep. Arza, Rep. Rubio, President John McKay, and others throughout the legislative session." Trans. at P52:L8-17. According to Martinez, his "main objection at the beginning was the way that they were splitting the congressional seats in Hialeah. The original maps showed that Hialeah was going to be split into three congressional districts. After they reviewed that, they changed that and only divided the city in two." *Id.* at P52:L20-25.

219. Martinez further testified that he was constantly sent redistricting maps by legislators. Trans. at P53:L19-22. However, notwithstanding the fact that two of the

---

<sup>26</sup> The only exception was John Guthrie, the Staff Director for System Operations and Training, who was the Martinez Plaintiffs' second witness on the first day of trial. See Trans. at P77-78:L20-5.

public redistricting hearings were held within ten miles of the City of Hialeah, Martinez testified that he chose not to attend the meetings. Trans. at P62:L7-23.

220. The Martinez Plaintiffs' second lay witness was Alvaro Fernandez, the representative of SVREP. Trans. at P683-84:L20-5. Fernandez testified that he attended the redistricting hearings "in Tallahassee, Tampa, Orlando, Palm Beach County, and both in Miami" and "spoke in Tallahassee, in Orlando, Tampa, and in the one at FIU in Miami." *Id.* at P694:L15-20. He further testified that SVREP maintains a website and that he "believe[d]" that information about the public hearings was posted on SVREP's website." *Id.* at P697:L19-24.

221. Fernandez further testified that SVREP drew a redistricting map for Miami-Dade County and "worked with other organizations in drafting of maps, not necessarily for the state, . . . in several other places around the state." Trans. at P698:L11-18. However, SVREP did not propose a map to the Legislature because it "basically, ran out of time, ran out of manpower." *Id.* at P698:L19-21.

222. Rep. Lerner testified after Fernandez. Trans at P724:L17-23. Rep. Lerner testified that she also is a registered Democrat. Trans. at P725:16-16. Rep. Lerner attended the Miami public hearing at Florida International University, attended all of the redistricting committee meetings held by the Legislature, and voted on the legislative and congressional plans. *Id.* at 741-42:L22-6. She further testified that she met with Rep. Randy Ball about her concerns that her district had been divided in the new plan and was told that "what you need to do is speak with all of your colleagues, your neighboring districts, and develop consensus among them and draw an amendment, draw your own map and put your district back to the extent you can get the agreement of your

neighbors.” *Id.* P746:L11-15. Rep. Lerner further testified that she followed Rep. Ball’s advice and spoke with Rep. Marco Rubio, Rep. Carlos Lacasa, Rep. Renier Diaz de la Portilla, and Rep. Edward Bullard and “asked the same questions and got the same responses.” *Id.* at P746-748.

223. After her discussions with the several representatives, Rep. Lerner testified that she drafted a proposed plan with technical assistance from Bob West (a House staff member) under Rep. Lerner’s instruction to try to recreate former HD 119. Trans. at P748:L1-8 & P792-93:L3-4. Rep. Lerner then circulated her proposed amendment amongst her Miami-Dade representative colleagues and then filed her plan as a proposed amendment. *Id.* at P748:L9-15.

224. However, after she filed her amendment, Rep. Lerner “withdrew it because Representative Ryan’s plan had been filed and represented enough of my concerns for my district.” Trans. at P792:L8-11.

225. After Rep. Lerner testified, the Deutsch Intervenors called Alex Fekete to testify. Trans. at P809:L9-13. Although he did not testify as to requests to state legislators,<sup>27</sup> Fekete established that “in [his] capacity as Mayor [of Pembroke Pines] he can get audiences [with members of Congress].” *Id.* at P817-18:L24-2. He further testified that he successfully sought to influence federal decision-making by contacting more than one Member of Congress, in other words, not limiting his contacts to Congressman Deutsch, whose former district (CD 20) encompassed the City of Pembroke

---

<sup>27</sup> Sen. Debbie Wasserman-Schultz specifically testified that Fekete contacted her about his concerns with respect to the congressional redistricting plan. *See* Trans. at P867:L4-13.

Pines: “We have reached out to our democratic congressmen. They are fighting to preserve our COPS programs and our community development block grant dollars.” *Id.* at P824:L16-19.

226. The Deutsch Intervenors’ next witness was Sen. Debbie Wasserman-Schultz, who testified that she is a member of several committees and subcommittees of the Legislature, including ones involved with redistricting. *See* Trans. at P833-835. Sen. Wasserman-Schultz also testified that she was involved in the congressional plan introduced by Sen. Jones. *Id.* at P859:L21-24.

227. Sen. Wasserman-Schultz also testified that she attended “a number of hearings on redistricting,” *id.* at P837:L21-24, including the Tallahassee hearing (*id.* at P839:L6-9), the Jacksonville hearing (*id.* at P840:L6-9), the Ocala hearing (*id.* at P842:L15-17), the “really long” Orlando hearing (*id.* at P843:L11-13), the Daytona hearing (*id.* at P844:L23-25), the Delray Beach hearing (*id.* at P846:L12-14), the Naples hearing (*id.* at P847:L12-14), the Ft. Myers hearing (*id.* at P848-49:L24-1), the Pembroke Pines hearing (*id.* at P849:L20-22), the Davie hearing (*id.* at P850:L17-19), and the Opa Locka hearing (*id.* at P851:L19-23).

228. The Martinez Plaintiffs’ final lay witness was Alberto Cardenas, Chairman of the Republican Party of Florida. *See* Trans. at P941:L14-25. During his testimony, the defendants stipulated that “both parties are going to try to maximize their representation.” Trans. at P959-60:L4-1. However, Cardenas testified that his “goal as party chairman is to win four more seats in the State of Florida this year. And based on what the Legislature did, it looks like we may well fall short of that mark.” *Id.* at P987:L13-16.

229. The plaintiffs' side final lay witness was Rep. Peter Deutsch, Member of Congress representing former CD 20. Although identified a "lay" witness, Rep. Deutsch, testified expansively as an expert on political gerrymandering issues.<sup>28</sup> Indeed, the Court had to admonish him during his testimony, reminding him that "Congressman, . . . you can't be witness, plaintiff, Judge, jury all rolled up into one." Trans. at P1766:L12-13.

230. Rep. Deutsch testified that he "followed the [redistricting] process very closely" and "was in Tallahassee . . . four times during the legislative session." Trans. at P1572:L6-9. Rep. Deutsch further testified that he met "individually on a number of occasions" with the Speaker, the President, Sen. Latvala, and Rep. Diaz-Balart and "kept intimately involved with the process the entire time." *Id.* at P1572-73:L12-9.

231. Rep. Deutsch testified that he was successful in convincing the Republican legislature to change portions of their redistricting plans, claiming responsibility for causing a revision to a proposal for new CD 22 that would have encroached too far—in Rep. Deutsch's view—into "my district." *See* Trans. at P1573-74:L23-17.

---

<sup>28</sup> Prior to testifying, Rep. Deutsch had never been identified as an expert, as required by several Orders of the Court. *See, e.g.*, Omnibus Order [D.E. 83] at 1 (requiring expert disclosures and reports by May 10, 2002); Order [D.E. 143] at ¶ 6 (placing parties under a continuing obligation to provide expert disclosures as soon as information is learned and requiring any expert disclosures provided after May 20, 2002, to be accompanied by a motion for leave to file out of time); Omnibus Order [D.E. 201] at 2 (requiring exchange of witness lists and objections to witness proffers by 5:00 p.m. on May 31, 2002). In addition, his proffer was extremely brief, failing to cover the significant majority of the issues addressed in his testimony. *See* Notice of Filing, "Proffer by Peter Deutsch." Accordingly, the Court strikes his testimony to the extent that it addresses any issue outside the generic partisan gerrymandering claims raised by the Deutsch Intervenors and gives his testimony only the weight of that of any other lay witness.

232. Rep. Deutsch further testified—in response to questioning by the Court—that “about 40 states do traditional political gerrymandering or political reapportionment.” Trans. at P1645:L13-14. In addition, testifying about his experience as Chairman of the House subcommittee in charge of congressional redistricting in 1992, Rep. Deutsch stated, “I’m sure we tried to maximize Democratic members of Congress. I’ve said that. I don’t deny it. I’m proud of it. I wish we were more successful.” *Id.* at P1689:L1-3. However, as noted by Rep. Deutsch with respect to the legislative plan that was passed in 1992 while he was a member of the Legislature, “the plan . . . passed for the Florida House of Representatives in 1992, within three election cycles, went from 74 Democrats to 70 Republicans and a Republican Speaker of the House for the first time since Reconstruction.” *Id.* at P1714:L11-16.

233. Finally, Rep. Deutsch indicated that every single member of Congress would respond to his or her constituents and work to help constituents, regardless of party affiliation: “I think that all 435 members of Congress would pride themselves to not have any distinction in terms of constituent service base on party affiliation . . . .” Indeed, “if the Republican Committee of Broward County . . . called [him] trying to change [his] vote on how budget service should go,” Rep. Deutsch testified that “I would be very polite and I would listen to them . . . .” Trans. at P1745:L5-22.

234. Dr. Stanley testified that Florida is trending Republican, “in terms of an increase, increased presence of Republicans” in elected positions at the state and federal levels. Trans. at P2099:L3-7. This analysis confirms Rep. Deutsch’s recognition that the Legislature has switched from being dominated by Democrats in 1992 to being

dominated by Republicans in 2002, notwithstanding Rep. Deutsch's party's best efforts to redistrict in 1992 to preserve the then-existing dominance of the Democratic party.

235. No elections have been held under the congressional plan.

#### **THE OPEN PRIMARY CLAIM**

236. In 2001, Florida enacted section 26, Chapter 2001-40, which eliminates run-off elections in primaries for the Fall 2002 elections only. This statute provides that "[t]he candidate receiving the highest number of votes cast in each contest in the primary election shall be declared nominated for such office." Consequently, the candidate who receives the most votes in a 2002 primary, not the majority of votes, will be declared the party nominee.

237. Political science studies demonstrate that the existence of a runoff for a nomination (a majority vote requirement) tends to have the effect of promoting candidacies, thus expanding the number of candidates seeking the nomination. On the other hand, an electoral system in which a plurality win suffices tend to limit the number of candidates seeking the nomination to two. Tr. Trans. P1878-79:L16.

237-A. In fact, Dr. Stanley concluded that "the number of candidates that may be running when the runoff is in existence is not a sound basis on which to predict what would happen in the absence of the runoff." *Id.* at P1879:L4-6. In response to the Court's inquiry on this issue, Dr. Stanley confirmed that his conclusion applied equally to majority-white districts as well as majority-Black districts.

237-B. The Martinez Plaintiffs chose not to attempt to rebut this testimony.

238. Article VI, Section 5(b), added to the Florida Constitution in 1998, provides: "If all candidates for an office have the same party affiliation and the winner

will have no opposition in the general election all qualified electors, regardless of party affiliation, may vote in the primary elections for that office.” This provision is known as the “universal” or “open” primary law.

239. The Division of Elections has the responsibility to render advisory opinions as to the application of Chapters 96 through 106 of Florida Statutes. On May 11, 2002, the Division of Elections issued an advisory opinion answering the following question:

If two or more people of the same party qualify for the same office and a write-in candidate also qualifies for this office, do all registered voters participate or does this become a closed party primary?

In response, the Divisions of Elections stated:

The language in section 5(b) does not qualify the type of opposition required in a general election to prohibit all qualified electors, regardless of party affiliation, to vote in the primary election, nor does it require that the opposition be viable or have a realistic chance of success. If the framers of Revision 11 had wished specifically to exclude write-in candidates as opposition in the general election, they could have done so. Thus, it is the opinion of the Division that a write-in candidate constitutes opposition in a general election. If a write-in candidate will participate in the general election, the first and if necessary, the second primary will remain closed.

Division of Elections Opinion No. 00-06, May 11, 2002.

240. The conditions requiring an open primary occurred in only two cases out of 115 possible contests for Congressional seats from 1992 through 2000. Trans. at 1875-77:L1814 (Stanley). The open primary rules would not prevent a candidate for whom an open primary would be disadvantageous to ensure through legal means that the Primary Election would be closed.

241. Dr. Lichtman admitted that in the 2000 election cycle “there are very few, if any,” open primaries. Trans. at P646:L17-20. In fact, he testified that he “looked at the

black, the areas of Black concentration, as we discussed previously. I knew there weren't any." *Id.* at P646:L23-25. Furthermore, Dr. Lichtman testified that the upcoming 2002 primary for CD 23 is closed. *Id.* at P647:L2-7.

242. Dr. Hill testified that "the open primary law was in place and functioning in 2000;" however, he did not "recall ... having any open primaries in 2000 for the Congressional" and he further testified that "there were 30 write-in Congressional candidates in 2000, and there are only three in 1998." Trans at P1154:L8-20.

243. Finally, Dr. Hill testified that it is not difficult at all to become a write-in candidate because "you don't have to pay a filing fee; you don't have to pay a party fee; you don't have to pay a fee to anybody. You sign up to be a write-in candidate with the Division of Election or ..., for the county level, the supervisor." Trans. at P1161:21-24. Moreover, commenting on the ease of closing a primary, Dr. Hill testified "you might even say that somebody who loses an open primary because they failed to close it with a write-in [candidate] doesn't deserve to get elected." *Id.* at P1170:L7-10.

### **CONCLUSIONS OF LAW**

"We say once again what has been said on many occasions: reapportionment is primarily the duty and responsibility of the State through its legislature or other body, rather than of a federal court." *Chapman v. Meier*, 420 U.S. 1, 27 (1975).

### **JURISDICTION AND VENUE**

1. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331.
2. The Court has personal jurisdiction over all the parties.
3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b).

STANDING

4. Martinez plaintiffs SVREP and Rep. Lee and Deutsch intervenors Giuliani and Fakete lack standing to assert any claim.

5. Organizations have no independent standing; they only have representative standing. “An association has standing to bring suit on behalf of its members when its members would have standing to sue in their own right, the interests at stake are germane to the organization’s purpose, and neither the claim asserted nor the relief requested requires individual members’ participation in the lawsuit. *Hunt v. Washington State Apple Advertising Comm’n*, 432 U.S. 333, 343 [] (1977).” *Friends of the Earth, Inc. v. Laidlaw Environmental Svcs.*, 120 S.Ct. 693, 704 (2000).

6. For an organization such as SVREP to have representative standing, it must show that: “(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Doe v. Stincer*, 175 F.3d 879 (11th Cir. 1999) (quoting *Hunt*, 432 U.S. at 343).

7. SVREP’s representative, Alvaro Fernandez testified that SVREP does not represent individuals or have individual members. If it has no members, then SVREP cannot possibly show that its members would otherwise have standing to sue in their own right. Thus, SVREP fails the first element of this test, rendering the second and third elements moot. *See, e.g., Legal Aid Soc’y. of Hawaii v. Legal Servs. Corp.*, 145 F.3d 1017, 1030-31 (9th Cir. 1998) (denying standing to indigents rights group for failure to identify any member).

8. As plaintiffs and intervenor/plaintiffs, Rep. Lee, Giuliani, and Fekete bear the burden of establishing and proving by the applicable standard of proof that they have standing. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). However, they have failed to present any evidence that Representative Lee, Giuliani, or Mayor Fekete reside in challenged districts (or, for that matter, anywhere else).

9. Rep. Lee, Giuliani, and Fekete lack standing to assert any claims in this case because a plaintiff raising a voting rights claim must live in the challenged district. *United States v. Hays*, 515 U.S. 737, 745 (1995). *See also Johnson v. Mortham*, 915 F. Supp. 1529, 1536 (denying intervention to voters in action challenging Florida congressional district as a racial gerrymander as the voter intervenors resided outside the district at issue and, therefore, lacked standing). Having presented no evidence that they live in any district—much less any challenged district— Rep. Lee, Giuliani, and Fekete lack standing.

10. The Martinez Plaintiffs' Count XIII, which alleges disparate treatment among Hispanics in South Florida, must be dismissed for lack of standing in its entirety.

11. The core claims in Count XIII are that: (i) "Ninety percent of Cuban Hispanics in Broward, Collier, Miami-Dade and Monroe Counties were placed in a majority-Hispanic district, while only 66 percent of non-Cuban Hispanics in those same counties were placed in a majority-Hispanic district," SAC at ¶ 161; (ii) "Eighty-three of Cuban Hispanics in Broward and Miami-Dade Counties were placed in a majority-Hispanic House district, while only 55 percent of non-Cuban Hispanics in those same counties were placed in a majority-Hispanic district," *id.* at ¶ 163; and (iii) "Eighty-one of Cuban Hispanics in Miami-Dade County were placed in a majority-Hispanic Senate

district, while only 59 percent of non-Cuban Hispanics in those same counties were placed in a majority-Hispanic district,” *id.* at ¶ 165.

12. None of the Martinez Plaintiffs asserting the claim for disparate treatment among Hispanics in South Florida has standing. As to the districts challenged in this claim in which Martinez, Molina, Vilar, Ruiz, Paez, Rep. Meadows, Rep. Bendross-Mindingall, Rep. Lerner, do not live—CDs 14, 17, 19, 20, 22, 23, and 25; HDs 102, 103, 104, 108, 111, 112, 113, 114, 115, 116, 117, and 118; and, SDs 36, 38, and 40,—the claims must be rejected because residence in the challenged district is required for standing. *See Hays*, 515 U.S. at 745.

13. As for the districts in which the Martinez Plaintiffs bringing this claim do live, these Plaintiffs lack standing to bring such claims. Martinez is an Hispanic resident CD 21 and HD 110 and both are Hispanic majority VAP districts. Similarly, Paez is an Hispanic resident of CD 18 and HD 107, Ruiz is an Hispanic resident of CD 21, and Molina is an Hispanic resident of CD 18 and HD 119; all of these districts are Hispanic majority VAP districts.<sup>29</sup> As all of these plaintiffs live in Hispanic majority VAP districts, they have no standing to assert claims based on alleged harms suffered by residents of non-Hispanic majority districts. *See, e.g., Lujan*, 504 U.S. at 561.

14. Rep. Bendross-Mindingall is a Black resident of former and new CD 17 and former and new HD 109; Rep. Meadows is a Black resident of former and new HD 94; Lerner a white resident of former HD 119. Since none of these plaintiffs are Hispanics (Cuban or non-Cuban) and thereby not injured by the alleged disparate

treatment, they have no standing to assert claims alleging disparate treatment amongst Hispanics. *See, e.g., Lujan*, 504 U.S. at 561.

15. Accordingly, the claims by SVREP, Rep. Lee, Giuliani, and Fakete are dismissed for lack of standing, as is the entirety of Count XIII of the Martinez Plaintiffs' Second Amended Complaint.

### VOTING RIGHTS ACT SECTION 2

16. Section 2 of the Voting Rights Act (the "VRA") was intended to enforce the Fifteenth Amendment's guarantee that no citizen's right to vote "be denied or abridged ... on account of race, color, or previous condition of servitude." U.S. Const. Am. 15, *Voinovich v. Quilter*, 507 U.S. 146 (1993).

17. Congress amended the VRA in 1982 to abrogate the Supreme Court's decision in *City of Mobile v. Bolden*, 446 U.S. 55 (1980), which held that the VRA required plaintiffs to make a showing of discriminatory intent. *Thornburg v. Gingles*, 478 U.S. 30 (1986); S.Rep. 97-417 (1982), 1982 U.S.C.C.A.N. 177, 179. The 1982 amendment re-instituted the discriminatory results test previously employed in *White v. Regester*, 412 U.S. 755 (1973).

"Congress substantially revised § 2 to make clear that a violation could be proved by showing discriminatory effect alone and to establish as the relevant legal standard, the 'results test,' applied by this Court in *White v. Regester*, 412 U.S. 755, 93 S. Ct. 2332, 37 L. Ed. 2d 314 ... and by other federal courts before *Bolden*..."

*Gingles*, 478 U.S. at 35.

18. Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, presently provides:

---

<sup>29</sup> Vilar is an Hispanic resident of Miami-Dade County, Florida, with no district of residency alleged or proffered. Therefore, he has no standing to assert any claim.

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2)<sup>30</sup> of this title, as provided in subsection (b) of this section.

(b) A violation of subsection (a) is established if, based on the totality of the circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered:

*Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

19. Section 2 requires an analysis as to whether minority voters have less opportunity to participate in the political process or to elect representatives of their choice:

The essence of a §2 claim is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by [minority] and white voters to elect their preferred representatives.

*Gingles*, 478 U.S. at 47 (applying the VRA to an at-large electoral system); *Voinovich*; 507 U.S. at 152-53 (applying the VRA to a challenge of a single-member district system). Thus, while Section 2 is not meant to provide an assurance of proportional success for

---

<sup>30</sup> 42 U.S.C. 1973b(f)(2) states:

No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote because he is a member of a language minority group.

minority candidates at the polls, *see Johnson v. De Grandy*, 512 U.S. 997, 1017-18 (1994), it is, at least, supposed to provide an assurance equal opportunity, *Uno v. City of Holyoke*, 72 F.3d 973, 979 (1st Cir. 1995).

20. The Voting Rights Act does not require a federal court to micro-manage the districting choices of a legislative body. A federal court's review of districting legislation represents a significant intrusion into what has traditionally been one of the most primary of local political functions. *See Miller v. Johnson*, 515 U.S. 900, 115 S. Ct. 2475, 2488 (1995) (equal protection challenge to a "race-based" district). It is not enough for a plaintiff in a Section 2 case merely to claim that lines could have been drawn differently because any division or combination will inevitably disappoint some part of the community. *De Grandy*, 512 U.S. at 1015; *African-American Voting Rights Legal Defense Fund v. Villa*, 54 F.3d 1345, 1355 (8th Cir. 1995).

21. The inequality of opportunity which the Voting Rights Act seeks to eradicate includes electoral schemes which minimize the ability of minority members to elect candidates of their choice by diluting minority voting strength. Plaintiffs may allege not only that they have no opportunity to elect their preferred candidates, but also that they have been denied as much opportunity as that to which they are entitled:

Plaintiffs challenging single-member districts may claim, not total submergence, but partial submergence; not the chance for some electoral success in place of none, but the chance for more success in place of some.

*De Grandy*, 512 U.S. at 1012-13. The appropriate measure of Section 2, however, can never be the failure to maximize the number of minority wards:

One may suspect vote dilution from political famine, but one is not entitled to suspect (much less infer) dilution from mere failure to guarantee a political feast ... The failure to maximize cannot be the measure of Section 2.

*De Grandy*, 512 U.S. at 1016-17, 114 S. Ct. at 2659-60.

22. Vote dilution can take the form of packing or fracturing. Packing is the concentrating of minority members into districts in which they constitute an excessive majority. Fracturing is the dispersing of a minority community into separate political districts which prevents a minority community from constituting a majority within a single district. *Hastert v. State Bd. of Elecs.*, 777 F. Supp. 634, 646 (N.D. Ill. 1991).

23. Through fracturing, a minority group that could form a sizeable majority in one district is split into two or more districts such that the minority members constitute an ineffective political grouping in each. *Ketchum*, 740 F.2d at 1408 n.8.

24. The Court finds, as a matter of law, that the Martinez Plaintiffs have failed to establish either fracturing or packing with regard to any of the contested districts.

#### *The Gingles Test*

25. The Supreme Court in *Gingles* first interpreted the amended Section 2 in a case involving a challenge to a multi-member at-large districting scheme instituted by the North Carolina legislature. The *Gingles* Court held that three threshold conditions must be established by plaintiffs in order to prevail on a Voting Rights Act § 2 claim:

First, the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district...Second, the minority must be able to show that it is politically cohesive...Third, the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it - in the absence of special circumstances, ...-usually to defeat the minority's preferred candidate.

*Gingles*, 478 U.S. at 50-51, 106 S. Ct. at 2766.

26. The Supreme Court subsequently applied the *Gingles* test to claims alleging vote dilution in connection with single-member districts. *Grove v. Emison*, 507 U.S. 25, 37-42 (1993); *Voinovich*, 507 U.S. at 157, 113 S. Ct. 1149, 1157.

27. In order to prevail on a VRA § 2 claim, plaintiffs must first establish each of the three preconditions by a preponderance of the evidence. *Gingles*, 478 U.S. at 50, 106 S. Ct. at 2766.

28. The first two *Gingles* preconditions ask whether minority voters within a constituency have the potential to elect representatives of their choice. *Grove*, 507 U.S. at 39-41, 113 S. Ct. at 1084; *Uno*, 72 F.3d at 979.

29. These first two preconditions ask the trial court to anticipate whether it can fashion a remedy for a violation of Section 2 of the Act. *Nipper v. Smith*, 39 F.3d 1494, 1511 (11th Cir. 1994)(en banc), cert. denied, 514 U.S. 1083, 131 L. Ed. 2d 723, 115 S. Ct. 1795 (1995). A group cannot prevail on a Section 2 claim if it lacks either compactness of population or political cohesiveness. Without proof of those first two preconditions, the minority group has failed to show that it would benefit from the drawing of an additional single-member district. *McNeil v. Springfield Park Dist.*, 851 F.2d 937, 942 (7th Cir.), cert. denied, 109 S.Ct. 1764 (1988).<sup>31</sup>

30. The third *Gingles* precondition requires the Court to determine whether “the challenged districting thwarts a distinctive minority vote by submerging it in a larger white voting population.” *Grove*, 507 U.S. at 40, 113 S. Ct. at 1084; *Reed v. Town of*

---

<sup>31</sup> As noted previously, the failure to merely maximize minority districts can never be the touchstone of Section 2 claim. *De Grandy*, 512 U.S. at 1016, 114 S. Ct. at 2659.

*Babylon*, 914 F. Supp. 843, 863 (E.D.N.Y. 1996). The third *Gingles* precondition asks whether the challenged practice, districting scheme, or electoral structure is a cause of the minority group's inability to mobilize its potential voting power and to elect its preferred candidates. *Uno*, 72 F.3d at 980,. The third *Gingles* prong seeks to identify "legally significant white bloc voting," that is, white bloc voting that normally defeats the combined strength of minority support plus white 'crossover' votes. *Gingles*, 478 U.S. at 56, 106 S. Ct. at 2769.

31. When analyzing racial bloc voting, *Gingles* instructs that a pattern of racial bloc voting extending over a period of time is more probative than the results of a single election. *Gingles*, 478 U.S. at 57; *NAACP v. City of Niagara Falls*, 65 F.3d 1002, 1012 (2d Cir. 1995).<sup>32</sup>

32. When analyzing voting patterns and behavior in order to determine minority cohesion and white racial bloc voting, a court need not be color-blind to the race of candidates when analyzing patterns of minority voting cohesion and majority racial bloc voting. However, the law does not require an assumption that only minority members can be the minority candidate of choice:

We decline to adopt an approach precluding the possibility that a white candidate can be the actual and legitimate choice of minority voters. Such an approach would project a bleak, if not hopeless, view of our society -- a view inconsistent with our people's aspirations for a multiracial and integrated constitutional democracy.

*City of Niagara Falls*, 65 F.3d at 1015.

---

<sup>32</sup> Plaintiffs, however, cannot prevail on the third *Gingles* prong in the face of significant probative evidence establishing that whites vote as a bloc for reasons wholly unrelated to race. *UNO*, 72 F.3d at 981.

33. The satisfaction of the three *Gingles* preconditions, while necessary for the establishment of a Section 2 vote dilution claim, is not sufficient to establish the existence of dilution.

[I]f *Gingles* so clearly identified the three as generally necessary to prove a § 2 claim, it just as clearly declined to hold them sufficient in combination, either in the sense that a court's examination of relevant circumstances was complete once the three factors were found to exist, or in the sense that the three in combination necessarily and in all circumstances demonstrated dilution... The ultimate conclusions about equality or inequality of opportunity were intended by Congress to be judgments resting on comprehensive, not limited, canvassing of relevant facts. Lack of electoral success is evidence of vote dilution, but courts must also examine other evidence in the totality of circumstances, including the extent of the opportunity minority voters enjoy to participate in the political process.

*De Grandy*, 512 U.S. at 1011. See also *City of Niagara Falls*, 65 F.3d at 1007; *Nipper*, 39 F.3d at 1515.<sup>33</sup>

34. The Court finds, as a matter of law, that the Martinez Plaintiffs have failed to establish a viable § 2 claim with regard to CD 3 and HD 118, because they have failed

---

<sup>33</sup> In *Nipper*, Judge Tjoflat, writing for the plurality, stated:

We hold that section 2 prohibits those voting systems that have the effect of allowing a community motivated by racial bias to exclude a minority group from participation in the political process. Therefore, if the evidence shows, under the totality of the circumstances, that the community is not motivated by racial bias in its voting patterns, then a case of vote dilution has not been made. Our interpretation of the Voting Rights Act is supported by the text of the statute, the legislative history accompanying the 1982 amendment to section 2, and the Supreme Court's vote dilution cases.

39 F.3d at 1514-15. The plurality view in *Nipper* was adopted by the Eleventh Circuit in *Solomon v. Liberty County Commissioners*, 221 F.3d 1218, 1224 (11th Cir. 2000).

to establish that Blacks as a group in the area are either large enough or compact enough to form a majority in a single member district.

35. As noted above, the evidence in this matter shows that CD 3, 17, and 23, and HD 103, 109, and 118 will elect Black candidates of choice, and the Court finds, as a matter of law, that the Martinez Plaintiffs have failed to establish the third *Gingles* pre-condition, that white block voting usually prevents the election of the preferred candidate of Black voters.

36. Moreover, the Court finds that the Martinez Plaintiffs have failed to establish the third *Gingles* pre-condition with regard to HD 108, in that Dr. Lichtman's entire presentation was premised on the unlikely occurrence of an open primary.

36-A. Dr. Hill's testimony and Fernandez' testimony establish that the Legislature had a more than adequate basis from which to choose to preserve the Haitian community-of interest in HD 108.<sup>34</sup>

---

<sup>34</sup> Haitians are a separate language group in Miami-Dade County—as speakers of Creole—but have not yet been formally recognized in the case law as a “language minority” under § 2 of the VRA. Indeed, the Court notes that an interpretation of the VRA that did not protect Haitians while similarly-situated Hispanics were protected would raise substantial Equal Protection issues, and an interpretation of the VRA to exclude Haitians could result in a finding of as-applied unconstitutionality. Accordingly, the Court cannot accept the Martinez Plaintiffs' new argument that Creole minorities are not covered by the Voting Rights Act. *See* Trans. at P2557:L18-25 (Williams). In addition, dilution of that community may well be cognizable under the Equal Protection Clause and 42 U.S.C. § 1983. Although the Court properly makes no such finding as to either issue here, *see, e.g., Allstate Ins. Co. v. Serio*, 261 F.3d 143, 149-50 (2d Cir. 2001) (“It is axiomatic that . . . federal courts should, where possible, avoid reaching constitutional questions.”), the choice to protect the Haitian community-of-interest in HD 108 was well with the Legislature's discretion.

37. In addition, with regard to the Martinez Plaintiffs' claims regarding SDs 1 and 18, the Court finds that these plaintiffs failed to present any credible evidence with regard to any of the three *Gingles* preconditions.

*Alternative Plans*

38. In *Holder v. Hall*, 512 U.S. 874 (1994), there was general accord, in an otherwise divided opinion, that plaintiffs in vote dilution cases must demonstrate that the challenged system suppress minority voting strength in comparison to some alternative, feasible, benchmark system. The Eleventh Circuit has issued at least three opinions expressly requiring an alternative plan to satisfy the first *Gingles* prong. In *Nipper*, the Eleventh Circuit concluded that "the possibility of an acceptable remedy is essential to a successful section 2 vote dilution claim ..." *Nipper* 39 F.3d at 1533. Then, in *SCLC v. Sessions*, 56 F.3d 1281, 1289 (11th Cir. 1995) (en banc), the Eleventh Circuit stated, "[P]laintiffs must show that an appropriate remedy can be fashioned" as part of the first *Gingles* preconditions. Most recently, in *Negron v. City of Miami Beach*, 113 F.3d 1563, 1571 (11th Cir. 1997), the Eleventh Circuit reaffirmed the decisions in *Nipper* and *SCLC* and further held that an alternative plan depicting only one of seven city commission districts failed to satisfy the first *Gingles* precondition.

39. Specifically, the *Negron* court stated:

A district court cannot implement an incomplete plan, containing only a single district, with the rest of the map left blank. Because this plan does not provide an "alternative, feasible benchmark system," plaintiffs' testimony regarding this incomplete plan fails to meet the first *Gingles* precondition."

*Id.*

40. Neither the Jones Plan nor the Revised Fairness plan meet this burden of providing a legal and feasible alternative plan. The Martinez Plaintiffs' main expert, Dr. Lichtman, did not prepare any alternative plans. *See* Trans at P482:L25. In fact, when asked a series a questions regarding whether his opinions were based solely upon statistical analysis and did not take into account specific practical considerations in the drawing process, Dr. Lichtman stated, "Having done no map work, and therefore, not knowing anything about these populations in the region, it's impossible to answer." *Id.* at P485; L5-7.

40-A. As a matter of law, to satisfy the first *Gingles* precondition, the Martinez Plaintiffs are required to submit to the Court an "alternative, feasible benchmark system," because the Court "cannot implement an incomplete plan . . ." *Negron*, 113 F.3d at 1571. "If the plaintiffs in a § 2 case cannot show the existence of an adequate alternative electoral system under which the minority group's rights will be protected, then the case ends on the first prerequisite." *Brooks v. Miller*, 158 F.3d 1230, 1239 (11th Cir. 1998).

40-B. The Martinez Plaintiffs fail this test as to both the Jones Plan and the Revised Fairness Plan. Indeed, the Martinez Plaintiffs' primary expert shied away from the challenge, asserting with respect to the Jones Plan that "[t]his was just an **illustrative** plan." Trans. at P624:L17 (emphasis added). And, as to the Revised Fairness Plan, neither Dr. Lichtman nor Dr. Webster asserted that that plan was even "illustrative," both failing to comment on the adequacy of the plan as a whole whatsoever.

41. The Court finds, as a matter of law, that the Jones Plan, because it would dilute Hispanic voters in CD 25 and because it replicates the constitutionally-suspect "kite tail" of former CD 17, is not a feasible and legal alternative plan. Furthermore, the

fact that the Revised House Fairness Plan only provides for 10 African-American majority seats, where the enacted House plan provides 13, establishes that the Revised House Fairness Plan would be dilutive of the rights of African-American voters to elect candidates of choice.

41-A. “If using control of seats as our standard does not reflect a very nuanced theory of political participation, it at least has the superficial advantage of appealing to the ‘most easily measured indicia of political power.’ *Davis v. Bandemer*, 478 U.S. 109, 157 [] (1986).” *Holder*, 512 U.S. at 899 n. 6. Under this indicia of political power, it is clear that the enacted House plan establishes greater political participation for African-Americans than does the Revised House Fairness Plan and, therefore, is not an alternative, feasible benchmark system as a matter of law.

41-B. In addition, the Martinez Plaintiffs also failed to establish that the Revised Fairness Plan complies with any of the basic constitutional requirements for a redistricting plan, including the most basic “one person, one vote” requirement. They have not presented evidence that the districts touching upon Florida’s § 5 counties—Collier, Hardee, Hendry, Hillsborough, and Monroe—do not retrogress the voting rights of minorities in those counties. They have not presented evidence that the districts were not drawn primarily for racial purposes. Most significantly, as noted above, the Martinez Plaintiffs not only failed to present evidence that the Revised Fairness Plan enhances minority representation in Florida’s House of Representatives, the defendants have established—although it was not their burden to do so—that the enacted House Plan is actually superior to the Revised Fairness House Plan in terms of minority representation in Florida’s House of Representatives.

41-C. Similarly, although it was not their burden to establish that the alternative congressional plan was **not feasible, as** “the issue of remedy is part of the plaintiff’s **prima facie case** in section 2 vote dilution cases”, *Nipper*, 39 F.3d at 1530 (emphasis added), the defendants demonstrated two significant problems with the Jones Plan, each of which establishes that the Jones Plan is not an “alternative, feasible benchmark system.”

41-D. First, defendants established that CD 25 in the Jones Plan will not perform. Dr. Hill testified to this effect and—despite the clear opportunity to do so—the Martinez Plaintiffs declined to attempt to rebut this testimony. Therefore, the Court must find that alternative CD 25 does not perform.

41-E. Second, the Martinez Plaintiffs failed to present evidence as to whether CD 17 in the Jones Plan was a racial gerrymander in violation of *Shaw v. Reno*, 509 U.S. 630 (1993). In sharp contrast, defendants presented evidence establishing that CD 17 in the Jones Plan most likely constitutes a racial gerrymander by retaining the “kite tail” of former CD 17.

41-F. Indeed, the Court notes that the configuration of former CD 17 is replicated in the Jones Plan and that configuration was challenged under *Shaw* in *Fouts v. Harris*, 88 F. Supp.2d 1351 (S.D. Fla. 1999) (three-judge court), before the claim was dropped at oral argument of pending motions in the matter. *See id.* at 1352. Accordingly, if pressed to the decide the issue, the Court would be required to find that, based on the evidence presented, Jones Plan CD 17 would violate the prohibition against racial gerrymanders established in *Shaw*.

41-G. Furthermore, even if CD 17 does not in fact constitute a racial gerrymander, the Legislature properly considered that issue in rejecting the Jones Plan. This Court may not intrude on the Legislature's authority to make that decision. *Chapman*, 420 U.S. at 27.

41-H. The Martinez Plaintiffs asserted at closing that it was not important that they present complete and adequate alternative plans at this time because that issue was only properly considered during the remedy phase of § 2 litigation. Trans. at P2549-50:L14-13 (Williams). However, the Eleventh Circuit specifically rejected that assertion in *Nipper*: "In sum, because none of the remedies the appellants propose could be implemented . . . , [they] are not entitled to relief under section 2 of the Voting Rights Act." 39 F.3d at 1546-47.

41-I. Neither the Jones Plan nor the Revised Fairness Plan constitute an "alternative, feasible benchmark system." Therefore, the Martinez Plaintiffs have failed to satisfy the first *Gingles* precondition.

42. Unlike the Martinez Plaintiffs, the Florida Legislature faced the daunting task, as recognized by Dr. Stanley, of balancing "the constitutional requirement of one person one vote, but also the Voting Rights Act and balancing the claims in the case of South Florida between blacks, and ... Hispanics under the Voting Rights Act ... also ... there are political considerations." Trans at P1825: L13-19.

43. The Martinez Plaintiffs may not sacrifice upon the altar of expedience the rights of Black Florida voters who live outside of the scope of their concern. The primary task of balancing the competing concerns of minority voters is appropriately left the Legislature. In *De Grandy*, the Supreme Court affirmed the decision of the district court,

which had found that no remedy to a vote dilution claim between Hispanics and African-Americans would have a practical effect. The district court concluded that because the remedy would be mutually exclusive it should “consequently deferred to the state legislature’s work as the ‘fairest’ accommodation of all the ethnic communities in South Florida.” 512 U.S. at 1004. Similarly, this Court finds that the legislatively adopted Congressional and House Plan provide the fairest accommodation of all ethnic communities in South Florida, and that the Martinez Plaintiffs’ alternative plans do not set forth a viable or constitutional alternative.

#### *Influence Districts*

44. In addition to the recognized forms of vote dilution demonstrated by packing and fracturing, courts have increasingly been called upon to consider claims for the failure to create “influence districts.” An influence district is a district including sufficient members of a minority group able substantially to influence an election but not numerous enough to comprise a majority in a district. *Uno*, 72 F.3d at 979, n.2; *McNeil*, 851 F.2d at 947.

45. The Supreme Court has declined on several occasions explicitly to decide whether an influence dilution claim is cognizable under VRA § 2. *See, e.g. De Grandy*, 512 U.S. at 1009; *Voinovich*, 507 U.S. at 158; *Gingles*, 478 U.S. at 56-57 n.12. In fact, the Eleventh Circuit has declined to find that the failure to create an influence district can be a basis for a claim under Section 2. *See, e.g., Johnson v. Desoto County Board of Comm’rs*, 204 F.3d 1335, 1346 (11th Cir. 2000); *Nipper*, 39 F.3d at 1531.

46. The Supreme Court in *De Grandy* noted the obligation of minority voters to “pull, haul, and trade, to find common political ground . . . the virtue of which is not to

be slighted in applying a statute meant to hasten the waning of racism in American politics,” appears to recognize the relevance of influence districts as a factor in considering the totality of the circumstances surrounding minority voters’ ability to participate in the political process. *See De Grandy*, 512 U.S. at 1020.

47. The issue, therefore, is not whether the VRA requires the creation of influence districts, but whether the voluntary creation of influence districts should be counted as a factor weighing against finding a Section 2 violation. *Rural West Tennessee African-American Affairs Council, Inc. v. McWherter*, 877 F. Supp. 1096, 1102 (W.D. Tenn. 1995).

48. There is no justification for going beyond the requirements of Section 2 and the analytical framework of *Gingles* in order to entertain a claim alleging that the State failed to create an adequate influence Congressional District in the area spanning Jacksonville to Orlando.

49. The Court therefore finds that the Martinez Plaintiffs have failed to make out a cognizable claim for “influence” dilution.

*Totality of the Circumstances*

50. This Court must engage in a searching examination of the “totality of the circumstances” in order to determine whether plaintiffs have established that they have “less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.” 42 U.S.C. § 1973; *De Grandy*, 512 U.S. at 1011; *Gingles*, 478 U.S. at 79-80; *Niagara Falls*, 65 F.3d at 1008; *Nipper*, 39 F.3d at 1513.

51. Both *Gingles* and *De Grandy* recognize the factors set out by the Senate Judiciary Committee in the Senate Report accompanying the 1982 amendment to the Voting Rights Act as a framework for evaluating the totality of circumstances. S-Rep. 97-417; *De Grandy*, 512 U.S. at 1010 n. 9. The Senate factors are:

1. The extent of any history of official discrimination in the state or political subdivision that touched the right of members of the minority group to register, to vote, or otherwise to participate in the political process;
2. The extent to which voting in the elections of the state or political subdivision is racially polarized;
3. The extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;
4. If there is a candidate slating process, whether the members of the minority group have been denied access to that process;
5. The extent to which the members of the minority group in the slate or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the process;
6. Whether political campaigns have been characterized by overt or subtle racial appeals;
7. The extent to which members of the minority group have been elected to public office in the jurisdiction.

S.Rep 97-417 at 28-29; *De Grandy*, 512 U.S. at 1010, n.9; *Gingles*, 478 U.S. at 44-45.

52. *Gingles* identifies two additional factors from the Senate Report which may have some probative value:

8. Whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group; and

9. Whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, standard, practice or procedure is tenuous.

*Gingles*, 478 U.S. at 44-45..

53. This list of relevant factors is intended to be "neither comprehensive nor exclusive." *Gingles*, 478 U.S. at 44-45. Rather, in deciding whether VRA § 2 has been violated, courts are given broad discretion to engage in a "searching practical evaluation of the 'past and present reality.'" *Gingles*, 478 U.S. at 45; *City of Niagara Falls*, 65 F.3d at 1008.

54. The responsibility of the Court to canvass the totality of the circumstances exhaustively was emphasized by the Supreme Court in *De Grandy*:

[U]ltimate conclusions about equality or inequality of opportunity were intended by Congress to be judgments resting on comprehensive, not limited, canvassing of relevant facts.

*De Grandy*, 512 U.S. at 1011. In *Nipper*, the Eleventh Circuit noted that "voting rights cases are inherently fact-intensive, particularly those section 2 vote dilution claims alleging that, due to the operation of a challenged voting scheme, minority voters are denied an equal opportunity to participate in the political process and to elect representatives of their choice . . . . Accordingly, because a claim of vote dilution must be evaluated with a functional, rather than formalistic, view of the political process, the Supreme Court has emphasized the importance of 'an intensely local appraisal of the design and impact' of the electoral structure, practice or procedure at issue." 39 F.3d at 1498, *citing Gingles*, 478 U.S. at 78.

55. In cases in which the question before the court is not whether a majority-minority districts should be drawn, but rather, similar to this case, whether the districts

purported to give minority communities an equal opportunity to elect candidates of choice actually provide such opportunities, the relative importance of the totality of the circumstances increases exponentially. *De Grandy*, 512 U.S. at 1011-14.

56. Furthermore, the *De Grandy* court indicated that:

To be sure, some § 2 plaintiffs may have easy cases, but although lack of equal electoral opportunity may be readily imagined and unsurprising when demonstrated under circumstances that include the three essential *Gingles* factors, that conclusion must still be addressed explicitly, and without isolating any other arguably relevant facts from the act of judgment. When the question thus comes down to the reasonableness of drawing a series of district lines in one combination of places rather than another, judgments about inequality may become closer calls. As facts beyond the ambit of the three *Gingles* factors loom correspondingly larger, factfinders cannot rest uncritically on assumptions about the force of the *Gingles* factors in pointing to dilution.

*Id.* at 1012.

57. The Supreme Court in *De Grandy* specifically criticized the district court for not evaluating whether a history of persistent discrimination reflected in the larger society had a dilutive effect on Hispanic voters in Miami-Dade County. *Id.* at 1013.

58. Here, the Martinez Plaintiffs attempted to establish the totality of circumstances required by *Gingles* solely through the testimony of Dr. Lichtman and a proffer by Nweze.

59. Dr. Lichtman caveats all his analysis with the following: "I don't think I purported to say I'm an expert in the demography in the state of Florida. I presented some information that I thought was relevant about the demography, but I'm not here as a demographic expert in the State of Florida." Trans. at P432:L15-19.

60. As a result of his limited expertise, Dr. Lichtman strictly relied on information available through the Census Bureau. Dr. Lichtman summarized his

testimony regarding totality of the circumstances as follows: "I found, based on the 1990 census, which provides a full report of various socioeconomic variables, like housing tenure, poverty, income, education, vehicles available, that there were quite substantial disparities between African-Americans and whites. And that based on what data was able to come up with, more limited data for 2000, where there are not full census reports broken down by race, that there continues to be a substantial disparity between blacks and whites when it comes to socioeconomic standing. And, further, based upon my experience and analysis, such socioeconomic disparities are consequential in participate fully in the political process and to elect candidates of their choice in Florida. . . . I also found from state reports some indications about the relationship between minorities enrolled in schools and school lunches, about health insurance coverage for minorities and whites, blacks and whites specifically, and eligibility for Medicaid program designed for the poor, for white and Black women giving birth in the State of Florida." Trans. at P402-403:L16-18.

61. The majority of the data relied upon by Dr. Lichtman is completely stale. He relied primarily upon the 1990 census data, and he stated that he was "not sure I can say that [the socioeconomic disparity between Whites and Blacks in the last ten years remains the same] because I don't have the exact correspondence, but based on what we do have, there remains a significance of socioeconomic disparity." Trans. at P420:L11-13.

62. Although the relevant law requires an intensely local appraisal of the totality of circumstances, Dr. Lichtman fails to analyze the impact of socioeconomic disparities between Whites and Blacks on the particular circumstances and voters within

the effected districts or communities. For example, Dr. Lichtman states: “The data, of course, is not complete, but based on what we have, it seems quite clear that there continues to exist socioeconomic disparities *in Florida* between African-Americans and whites.” Trans. at P407–408:L23-1. Moreover, Dr. Lichtman’s opinions, with regard to whether the socioeconomic disparities he described impact the ability of African-Americans to participate in the political process, discuss only the effects of socioeconomic factors on the African-American community in general.

63. For example, Dr. Lichtman states “we do know *in Florida* in general elections, where everybody is eligible to vote, that the turnout rates of African-Americans are lower than the turnout rates of non-African-Americans.” Trans. at P408:L16-18. With respect to homeownership rates, Dr. Lichtman provides general commentary regarding the gap between Black and White ownership on “the relative availability of things like campaign finance money, vehicles to bring voters to the polls, telephones to get out to vote, highly educated candidates, and it also has an impact upon voter turnout.” Trans. at P406–407:L24-3.

64. Further, Dr. Lichtman completely ignores the most relevant comparison of the totality of circumstances in Miami-Dade County. Although certainly the relevant inquiry for some of the Districts at issue outside of Miami-Dade County is the disparities between Whites and Blacks, the most relevant inquiry in Miami-Dade County is a comparison of Hispanics and Blacks. In a county in the majority of the population is either Black or Hispanic, the fight for political capital will most likely continue to be between these two minority groups.

65. The Nweze proffer simply reiterates similar census data provided by Dr. Lichtman. In addition, the proffer indicates “that they maintain an active and yearlong voter registration drive and they engage in get out the vote initiative” that resulted “in record turn out for the November 2000 Election.”

66. Simply stated: the analysis provided by the Martinez Plaintiffs does not provide the type of particularized and local assessment of the totality of the circumstances required by the Voting Rights Act. Neither Dr. Lichtman’s testimony nor the Nweze proffer tie in or address the districts at issue.

67. The Voting Rights Act is meant to address the evils of racial bias, and the denial of the rights of minorities to participate in the political process; it is not, however, intended to function as the guarantor of minority political success. The results test of Section 2 protects racial minorities against a stacked deck but it does not guarantee that their candidate of choice will win every election. *Uno*, 72 F.3d at 982.

68. Section 2 is intended to ensure minority voters equal political access, is not meant to release minority voters from the responsibility actual participating in the political process and coalescing behind a candidate. As the Supreme Court in *De Grandy* noted:

If the lesson of *Gingles* is that society’s racial and ethnic cleavages sometimes necessitate majority-minority districts to ensure equal political and electoral opportunity, that should not obscure the fact that there are communities in which minority citizens are able to form coalitions with voters from other racial and ethnic groups, having no need to be a majority within a single district in order to elect candidates of their choice. Those candidates may not represent perfection to every minority voter, but minority voters are not immune from the obligation to pull, haul, and trade, to find common political ground, the virtue of which is not to be slighted in applying a statute meant to hasten the waning of racism in American politics.

*De Grandy*, 512 U.S. at 1020 (emphasis added).

69. Politics is at the heart of the decennial process of redistricting. Politicians, be they White, Hispanic, or African-American or other, want to keep what they already have. Racial and ethnic consciousness, and perhaps even animosity, can possibly be one factor in the process, but will rarely be the only factor driving the map-drawing process. The desire to even political scores, to serve one's community or neighborhood, to reward political allies, to cut potential adversaries off at the knees, to improve the social or economic condition of constituents, to use the districting process to lay the groundwork for ensuring future governing coalition, or the desire to serve the public good are simply a sample of the factors which enter into the process of drawing districts in a large state such as Florida.

#### *Invidious Discrimination*

70. The Plaintiffs' have provided no evidence that any of the alleged impediments of African-American voters to elect candidates of their choice in the challenged district is due to invidious discrimination—a necessary element of a Section 2 claim. In *Nipper*, 39 F.3d at 1523, the Eleventh Circuit summarized the invidious discrimination requirement of Section 2:

In summary, a plaintiff must prove invidious discrimination in order to establish a violation of section 2 of the Voting Rights Act. Specifically, the plaintiff may prove *either*: (1) discriminatory intent on the part of the legislators or other officials responsible for creating or maintaining the challenged system; *or* (2) objective factors that, under the totality of the circumstances, show the exclusion of the minority group from meaningful access to the political process due to the interaction of racial bias in the community with the challenged voting scheme.

71. Instead of providing evidence of invidious discrimination, the Martinez Plaintiffs' main expert, Dr. Lichtman, proposed ideological reasons for why Republicans

would tend not to vote for African-Americans. First, he asserted “that there is a huge disparity in Florida between Democratic political ideology and Republican political ideology. . . And it shows Black Democrats at 91, white Democrats close behind at 71, and Republicans well behind that on a liberalism score of 12 percent.” Trans at P371; L12–25. Dr. Lichtman went on to testify that:

it makes a big difference politically whether it is a Democrat or a Republican being elected in one of these Congressional districts. This is not a situation where, on average, there’s only a minor degree of ideological difference in their voting records between Democrats and Republicans. . . . Black Democrats are the most liberal; white Democrats are close behind; and Republicans, not surprisingly, hold down the other end of the ideological spectrum, on average, being quite conservative in Florida; whereas, black Democrats are extremely liberal in terms of their voting record. And that goes to the point I was making earlier that it might be difficult to expect Republicans to come into an open primary and cast their votes for black Democratic candidates. They might come into a Republican primary and vote for black Republicans, that’s a whole different matter.

*Id.* at P372–73; L8–2.

72. Second, in an open primary in CD 23, Dr. Lichtman concludes that White Republicans will not vote for a Black Democrat, not because of some degree of invidious discrimination, but because “[t]he White Republicans then would have the same choice between a black Democrat and a white Democrat. And the data I presented showed that ideologically, white Democrats tend to be -- on the average, of course -- closer to white Republicans than do black Democrats.” *Id.* at P575; L17-22.

73. Third, when discussing the possibility that open primaries may result in more centrist Democratic candidates winning primaries, Dr. Lichtman emphasized that “It is possible, which would mean you probably wouldn’t get black Democrats then, and that’s precisely the point.” *Id.* at P603; L7-8.

74. The Martinez Plaintiffs, thus, completely fail to address a necessary element of their case and, in fact, provide substantial evidence that non-racial reasons support the voters' choices to vote against the certain Black candidates.

74-A. The Court notes that the Martinez Plaintiffs' and Dr. Lichtman's reliance on an Americans for Democratic Action survey, *see, e.g.*, Trans. at P371:L7-25, as evidence of racial voting is wholly unavailing. This evidence tends to establish that the black candidate of choice is defeated not because of his or her race, but because of his or her ideology. To the extent that this survey has any validity in these proceedings (which is in itself questionable), the survey shows that both black Democratic office holders and white Democratic office holders are **substantially** more liberal than Republican office holders, showing a 49 percent gap between Republicans and white Democrats and a 69 percent gap between Republicans and black Democrats on the "liberalism score." *See id.* Accordingly, if anything, this survey establishes that it is more likely that the votes against the black candidate of choice are based on ideology, and not on race.

*Proportionality of Representation*

75. While the proportionality of majority-minority districts in relation to the minority percentage of the total population, by itself, is never dispositive, it is relevant to the totality of the circumstances to be analyzed when determining whether members of a minority group have "less opportunity than other members of the electorate to participate in the political process and to elect representative of their choice." *De Grandy*, 512 U.S. at 1000, 114 S. Ct. at 2651.

76. While proportionality is not a safe-harbor for a particular districting scheme, when substantial proportionality exists, courts are reluctant to find a violation of

VRA § 2 absent some evidence of disproportionate treatment of minority members. *De Grandy*, 512 U.S. at 1015. Proportionality of representation is a factor in the totality of the circumstances analysis, but it cannot be the sole factor. Even a system in which minorities have more or less proportional representation can mask dilutive processes. *See De Grandy*, 512 U.S. at 1019.

76-A. Given the fact that Plaintiffs have only provided a cursory analysis of the totality of circumstances in the relevant districts, the proportionality analysis becomes even more significant. *See De Grandy*, 512 U.S. at 1020 (“ . . . the degree of probative value assigned to proportionality may vary with other facts”). Similar to the *De Grandy* Court, this Court does not “see how these district lines, apparently providing political effectiveness in proportion to voting-age numbers, deny equal political opportunity.” *Id.* at 1014. Thus, we find that in spite of cleavages that characterize Miami-Dade County and Broward County politics today, we see no grounds for holding that the new district lines dilute the votes cast by African American voters.

*Only Equality of Opportunity—Not Results—Is Required to Satisfy § 2*

76-B. This Court must treat equal political opportunity as the focus of its inquiry under Section 2. *De Grandy*, 512 U.S. at 1014. Section 2(b) of the Voting Rights Act guarantees only the right of citizens to an equal “opportunity . . . to participate in the political process and to elect representatives of their choice.” Section 2 does not require the creation of “safe” districts of sufficient black population to virtually guarantee the election of blacks in all circumstances. Such a conclusion is contrary to the direct intent of Congress in enacting Section 2(b).

76-C. This analysis of Section 2 was recently confirmed in *Page v. Bartels*, 144 F. Supp.2d 346 (D. N.J. 2001), in which the court noted that “a plaintiff need not demonstrate the white majority’s ‘unbending or unalterable hostility’ to the minority’s candidate of choice, but only that the usual result of bloc voting is the defeat of the minority preferred candidate.” *Id.* at 364 (quoting *Jenkins v. Red Clay Consol. Sch. Dist. Bd. of Ed.*, 4 F.3d 1102, 1123 (3d Cir. 1993)) (emphasis added).

76-D. The logic of the framework set out by the Supreme Court in *Gingles* and, specifically, the Court’s acceptance of and reliance on ecological regression, was not intended to deal with the fine gradations present in this case. The Court in *Gingles* was not presented with a situation in which the question was whether the addition or removal of a small percentage of African Americans from a given district would have a consequential political impact on the performance of a district created to give African-Americans an equal opportunity to elect candidates of choice. In such circumstances, the use of an analytical tool such as ecological regression can only give this Court a general sense of how a given district will perform. However, these tools do not enable the Court to determine with precision the performance of a given district.

76-E. In this case, both of the primary experts who used ecological regression point out the obvious: ecological regression only estimates of results of an election in any district. Dr. Hill noted that he could “not with extreme specificity” divine the probable result of an election using ecological regression. Trans. at P1121:L17. Similarly, when asked whether the results produced were estimates, Dr. Lichtman responded “everything is an estimate.” Trans. at P568:L8.

76-F. Therefore, consistent with the notion that equality—and not a guarantee of success—is the touchstone for this Court’s Section 2 analysis, when both the Martinez Plaintiffs’ and defendants’ experts find that any given district will perform for an African-American candidate of choice within a certain reasonable range of the necessary votes required for the election of a candidate, then the Court can find no Section 2 violation. As both Dr. Lichtman and Dr. Hill have found that the challenged new districts will perform at levels well within Dr. Lichtman’s “competitive range,” the Court finds no Section 2 violations.

77. Under the standards established by the Supreme Court and the Eleventh Circuit, the Martinez Plaintiffs’ § 2 claims must be rejected.

#### **THE EQUAL PROTECTION CLAIMS**

78. In view of the Court’s dismissal of the § 2 aspects of the Martinez Plaintiffs’ discriminatory intent claims with respect to the redistricting process in Count I and their disparate treatment amongst Hispanics claim in Count XIII, these claims are governed by the standard used in connection with 14th Amendment equal protection claims. *See Rogers v. Lodge*, 458 U.S. 613, 617 (1982); *Arlington Heights v. Metropolitan Housing Corp.*, 429 U.S. 252, 265, (1977); *Garza v. County of Los Angeles*, 918 F.2d 763, 771 (9th Cir. 1990), *cert. denied*, 498 U.S. 1028 (1991).

79. The Martinez Plaintiffs need not establish that a racially-discriminatory motive was the sole or primary purpose, but they have to establish that it was a motivating factor of the challenged districting scheme. *Arlington Heights*, 429 U.S. at 265; *Garza*, 918 F.2d at 771. The fact that a discriminatory plan may have other motives

that are not discriminatory does not make it any less intentional. *Barnett v. Daley*, 32 F.3d at 1199.<sup>35</sup>

80. In *Arlington Heights*, the Supreme Court also identified several general factors that may be probative to a finding of discriminatory intent. These factors include:

- a) the impact of the official action;
- b) the historical background of the decision, in particular if the background reveals a series of official actions taken for invidious purposes;
- c) the specific sequence of events leading up to the challenged decision;
- d) departures from normal procedural sequences;
- e) substantial departures from factors usually considered important by the decision makers and which strongly favor a decision contrary to the one reached.

*Arlington Heights*, 429 U.S. at 266-67.

81. Maurer, the Martinez Plaintiffs, and the Deutsch Intervenors have failed to provide any evidence of discriminatory intent.

#### **THE CUBAN HISPANIC VS. NON-CUBAN HISPANIC CLAIM**

82. The Martinez Plaintiffs' allegations of discrimination are not sustainable because they fail to allege that similarly situated people were treated unequally. *See, e.g.*,

---

<sup>35</sup> Title VI provides no greater protection than the Equal Protection Clause. *United States v. Fordice*, 505 U.S. 717, 732 n.7 (1992) ("Our cases make clear and the parties do not disagree that the reach of Title VI's protection extends no further than the Fourteenth Amendment."); *accord Elston v. Talladega County Bd. of Educ.*, 997 F. 2d 1394, 1405-06 n.11 (11th Cir. 1993). Because Plaintiffs' equal protection claims fail as a matter of law, their Title VI claims also fail; therefore, the Court will not separately address the Title VI claims. The requirement to plead and prove purposeful or intentional discrimination applies with equal force to the Martinez Plaintiffs' claims § 1983 claims, *Montero v. Temple Union High School Dist.*, 158 F.3d 1022, 1026 (9th Cir. 1998).

*GJR Invs., Inc. v. County of Escambia*, 132 F.3d 1359, 1368 (11th Cir. 1998) (dismissal of § 1983 claim appropriate for failure to allege “unequal treatment or discriminatory motive on the part of the defendants”).

83. Count V is premised on the fallacious assertion that “[i]n drawing the lines of Congressional District 25, the Legislature systematically treated Hispanics of Cuban origin more favorably than Hispanics of non-Cuban origin, and the Governor endorsed and ratified the Legislature’s disparate treatment of Hispanics on [sic] non-Cuban origin by signing into law HB 1993.” First Amended Complaint at ¶ 63. Setting aside the spurious nature of this claim, none of the plaintiffs is identified as “non-Cuban” and the only plaintiff identified as Hispanic (Martinez) is not even identified as Cuban. *See id.* at ¶ 5. Moreover, no plaintiff alleges that he or she lives in Congressional District 25, the district challenged in Count V. *See id.* at ¶¶ 5-7.

#### THE PARTISAN GERRYMANDERING CLAIMS

84. Maurer, the Martinez Plaintiffs, and the Deutsch Intervenors each raise partisan gerrymandering claims. The entirety of Maurer’s Complaint is a partisan gerrymandering challenge to the congressional plan. *See, e.g.,* Complaint [*Maurer* D.E. 1] at ¶ 4. Similarly, the entirety of the Deutsch Intervenors’ Complaint-in-Intervention is a partisan gerrymandering challenge, *see e.g. id.* at 2, brought under Article I, § 2 of the U.S. Constitution, the Equal Protection Clause, the Privileges and Immunities Clause, and the First Amendment, *see id.* at ¶¶ 34-41. Finally, Count XIV of the Martinez Plaintiffs’ Second Amended Complaint asserts that the congressional plan constitutes partisan

---

Therefore, the Court will similarly not separately address Plaintiffs’ § 1983 claims, as all of the Martinez Plaintiffs’ other claims fail.

gerrymandering in violation of the Equal Protection Clause and § 1983. *See* SAC at ¶¶ 167-173.

85. Partisan gerrymandering claims were first recognized as justiciable in *Davis v. Bandemer*, 478 U.S. 109 (1986), which set out the requirements for such a claim. Under the principles established in *Bandemer* as applied in subsequent cases, Mauer's, the Martinez Plaintiffs', and the Deutsch Intervenors' partisan gerrymandering claims must be rejected. Indeed, the most recent opinion on this issue, *O'Lear v. Miller*, 2002 WL 1052046 (E.D. Mich. May 24, 2002), specifically rejects each of the theories asserted in support of the partisan gerrymandering claims raised in this action.

*The Plaintiffs' and Intervenors' Claims Fail  
to Meet Bandemer's Exacting Standards.*

86. A partisan gerrymandering equal protection claim under *Bandemer* requires proof of "both intentional discrimination against an identifiable political group and an actual discriminatory effect on that group." 478 U.S. at 127 (emphasis added). While the Court recognized that "[a]s 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," *id.* at 129, the Court further held that

an equal protection violation may be found only where the electoral system substantially disadvantages certain voters in their opportunity to influence the political process effectively. In this context, such a finding of unconstitutionality must be supported by evidence of continued frustration of the will of a majority of the voters or effective denial to a minority of voters of a fair chance to influence the political process.

*Id.* at 133 (emphasis added). The Plaintiffs cannot meet this exacting standard.

87. Courts addressing *Bandemer*-based claims have focused on this second prong of the analysis, and consistently rejected claims of partisan gerrymandering.<sup>36</sup> In *O’Lear*, decided less than a month ago, the court was also faced with a challenge to Republican-drawn Michigan congressional districts, districts that were drawn after a three-judge court had drawn the districts in 1992. *See* 2002 WL 1052046 at \*1. In contrast to the situation in Florida, however, “the Michigan electorate has been trending Democratic in recent years.”

88. Taking all of the plaintiffs’ allegations as true, *id.*, the *O’Lear* court disposed of the Martinez Plaintiffs’ and Deutsch Intervenors’ claims in short order. First, “because plaintiffs do not claim that victorious Republican candidates would be indifferent to the interests of their Democratic constituents or that they have been

---

<sup>36</sup> The only case of which the Court is aware where a party was found to have succeeded on a *Bandemer* claim was in the litigation revolving around North Carolina’s statewide judicial election system, wherein the Republican Party of North Carolina (“RPNC”) alleged that since 1900 only one Republican judge had been elected through North Carolina’s statewide judicial election system. *See Republican Party of North Carolina v. Martin*, 980 F.2d 943, 948 & n.10 (4th Cir. 1992). In *Martin*, the Fourth Circuit reversed the district court’s grant of a motion to dismiss; however, the court specifically noted that “we believe that if RPNC had alleged even a **modicum** of electoral success or access to the political process, its claim might not have withstood a challenge under Rule 12(b)(6). And, whether RPNC ultimately will prevail on its claim is not before us.” *Id.* at 958 (emphasis added). Three years later, the case was back before the Fourth Circuit, after the district court upheld the partisan gerrymandering claim. *See Republican Party of North Carolina v. Hunt*, 77 F.3d 470, 1996 WL 60439 (4th Cir. Feb. 12, 1996). However, between the district court’s decision and the Fourth Circuit’s review, an election occurred which established Republican electoral success. As a result, the Fourth Circuit reversed the district court’s decision and remanded for further review in light of the established electoral success. *Id.* at \*4. North Carolina subsequently revised its judicial electoral scheme and changed from a statewide electoral scheme to a district electoral scheme. Thus, when the Fourth Circuit again addressed the case after the district court had affirmed its prior ruling as to the historical scheme, the Fourth Circuit vacated the case as moot. *See Ragan v. Vosburgh*, 110 F.3d 60, 1997 WL 168292, \*6 (4th Cir. Apr. 10, 1997).

completely shut-out of the political process, they fail to state an equal protection claim upon which relief can be granted.” *Id.* at \*4. Here, of course, the witnesses for Maurer, the Martinez Plaintiffs, and the Deutsch Intervenors established that victorious Republican candidates would not be indifferent to the interests of their Democratic constituents.

89. Moreover, Maurer, the Martinez Plaintiffs, and the Deutsch Intervenors failed to establish: “(1) that they have no chance of obtaining more favorable congressional districts in the next reapportionment; (2) that Republican candidates would be indifferent to the interests of Democratic citizens; or (3) that the challenged plan would result in Democrats being essentially ‘shut out’ of the political process; therefore, [they] do not [have] a cognizable equal protection claim.” *Id.* at \*5.

90. As is this Court, the three-judge court in *Vieth v. Pennsylvania*, 188 F. Supp. 2d 532 (M.D. Pa. 2002), was faced with Democratic challenges to Republican-drawn congressional redistricting plans and it rejected—on a motion to dismiss—every claim paralleling one brought by plaintiffs in this proceeding. The *Vieth* court dismissed the partisan gerrymandering claim because

Plaintiffs’ allegations . . . do not indicate that Plaintiffs have been, or will be, prevented from participating in the political process. Even assuming *arguendo* that Plaintiffs’ allegations are true, the court will dismiss Plaintiffs’ equal protection claim because Plaintiffs have not alleged facts indicating that as a result of [the redistricting plan] Plaintiffs will be completely shut out of the political process.

*Id.* at 544.

91. Indeed, one of the earliest cases to address *Bandemer*-based claims, *Badham v. Eu*, 694 F. Supp. 664 (N.D. Cal. 1988), also rejected the claims on a motion to dismiss. In language directly on point, the three-judge court stated:

It is on this second prong of the “effects” threshold that plaintiffs’ complaint falters. Specifically, there are no factual allegations regarding California Republicans’ role in “the political process as a whole.” [*Bandemer*, 106 S.Ct.] at 2810. There are no allegations that California Republicans have been “shut out” of the political process, nor are there allegations that anyone has ever interfered with Republican registration, organizing, voting, fund-raising, or campaigning. Republicans remain free to speak out on issues of public concern; plaintiffs do not allege that there are, or have ever been, any impediments to their full participation in the “uninhibited, robust, and wide-open” public debate on which our political system relies. *New York Times Co. v. Sullivan*, 376 U.S. 254, 270, 84 S.Ct. 710, 721, 11 L.Ed.2d 686 (1964). Particularly conspicuous by its absence is any allegation that plaintiffs’ interests are being “entirely ignore[d]” by their congressional representatives. *Bandemer*, 106 S.Ct. at 2810.

*Id.* at 670. Furthermore, the court rejected the plaintiffs’ generic claims inadequate representation resulting from the redistricting plan: “this conclusory language cannot disguise the fact that the only factual basis underlying these claimed effects is plaintiffs’ assertion of disproportionate underrepresentation.” *Id.* at 672. Consequently, the *Bandemer*-based claim was dismissed with prejudice. *Id.* at 673.

92. Akin to the plaintiffs in *O’Lear*, *Vieth*, and *Badham*, Maurer, the Martinez Plaintiffs, and the Deutsch Intervenors failed to demonstrate that they will be shut out of the political process. To the contrary, their witnesses established that that they will have their voices heard in the process, but just not as loudly as Maurer, the Martinez Plaintiffs, and the Deutsch Intervenors would prefer.

93. The requirement that a *Bandemer* claimant allege (and then prove) exclusion from the entirety of the political process is perhaps best stated by the three-judge court in *Pope v. Blue*, 809 F. Supp. 392 (W.D. N.C.), *aff’d*, 506 U.S. 801 (1992), which similarly reviewed a congressional redistricting plan:

under the requirements of *Bandemer* for showing discriminatory *effect*, the plaintiffs must show that they have been or will be consistently degraded in their participation in the entire political process, not just in the process

of redistricting. *See Bandemer*, 478 U.S. at 132 []. Neither the Republican party nor any other identifiable group conceivably represented by the plaintiffs in this case can make this showing. As a result, we hold that plaintiffs' complaint does not state a viable equal protection claim as outlined by the Supreme Court in *Davis v. Bandemer*.

*Id.* at 397 (italics in original). Accordingly, the court granted the defendants' motion to dismiss with prejudice. *Id.* at 399.

94. Maurer's, the Martinez Plaintiffs', and the Deutsch Intervenors' contentions "amount to this: [the plan] is rigged to guarantee that [a majority] of [the State's] congressional representatives will be Republicans. As a result, Democrats will have a more difficult time electing their candidates. . . . As *Bandemer* . . . dictate[s], these allegations are insufficient to make out a cause of action for violation of equal protection." *Vieth*, 188 F. Supp. 2d at 546. *See also Marylanders for Fair Representation, Inc. v. Schaeffer*, 849 F. Supp. 1022, 1039 (D. Md. 1994) ("The mere fact that a particular redistricting plan makes it more difficult for a particular group to elect the representatives of its choice does not render the plan constitutionally infirm."); *White v. Alabama*, 867 F. Supp. 1571, 1577 (M.D. Ala. 1994) ("The court further finds that Republicans are not being shut out of [the] political process . . . ."); *Badham*, 694 F. Supp. at 670 (granting motion to dismiss) ("There are no allegations that California Republicans have been 'shut out' of the political process, . . ."). Maurer, the Martinez Plaintiffs, and the Deutsch Intervenors failed to show that they have (or even would have) no influence on the political process as a result of the congressional redistricting plan; therefore, their partisan gerrymandering claims cannot stand.

*At Least One Election Testing the Challenged Redistricting Plan Is  
Required to Establish a Partisan Gerrymandering Claim*

95. In addition to setting a standard for political gerrymandering claims that Maurer, the Martinez Plaintiffs, and the Deutsch Intervenors failed, *Bandemer* further establishes that testing at the ballot box is required for such a claim to be justiciable. Indeed, Justice White's plurality opinion notes that "[r]elying on a single election to prove unconstitutional discrimination is unsatisfactory." 478 at 135. The opinion further expands on this point:

even if a state legislature redistricts with the specific intention of disadvantaging one political party's election prospects, we do not believe that there has been an unconstitutional discrimination against members of that party unless the redistricting does in fact disadvantage it at the polls. Moreover, as we discussed above, a mere lack of proportionate results in one election cannot suffice in this regard. . . . In the statewide political gerrymandering context, . . . prior cases lead to the analogous conclusion that equal protection violations may be found only where a history (actual or projected) of disproportionate results appears in conjunction with similar indicia. The mere lack of control of the General Assembly after a single election does not rise to the requisite level.

*Id.* at 139-140 (emphasis added).

96. Significantly, in Justice White's view, the plurality's standard "appear[s] to depart from Justice Powell" only with respect to the "requirement of more than a showing of possibly transitory results," *id.* at 140, and Justice White characterizes Justice Powell's view as "allow[ing] a constitutional violation to be found where the only proven effect on a political party's electoral power was disproportionate results in one (or possibly two) elections." *Id.* at 141.

97. Consistent with the *Bandemer* plurality's view of his concurrence, Justice Powell's analysis presumes that a redistricting plan must be tested at the polls. In fact, in arguing that the plurality erred in reversing the district court, Justice Powell pointed to

the fact that “[i]n 1982 and 1984, elections were held under the new redistricting plan.” *Id.* at 163. Indeed, his analysis consistently reflects a need for a political gerrymandering claim to be tested by election results before it may be addressed. *See id.* at 169 n.7, 172 n.10 & 173 n.13.

98. Courts interpreting *Bandemer* have similarly either ruled that election results are necessary or clearly presumed that elections are necessary for adjudicating *Bandemer*-based claims. *See, e.g., White*, 867 F. Supp. at 1576 (“Even assuming that [plaintiffs’ evidence] did suffice to show disproportionate election results in a few elections, the court would still have to grant summary judgment because there is not enough evidence of a long-term pattern since Republicans began to contest appellate judicial races.”); *Schaeffer*, 849 F. Supp. at 1041 (“A mere showing of disproportionate election results is insufficient, however. . . . [Plaintiffs] must also demonstrate that this history of disproportionate election results appears ‘in conjunction with strong indicia of lack of political power and the denial of fair representation.’” (quoting *Bandemer*, 478 U.S. at 139)); *Republican Party of Virginia v. Wilder*, 774 F. Supp. 400, 404-405 (W.D. Va. 1991) (denying preliminary injunction because “to succeed on their claim, the Republicans must prove an actual discriminatory effect. . . . In the case at hand, no election has occurred.”). *But see Pope*, 809 F. Supp. at 396-97 (granting motion to dismiss with prejudice, though finding that plaintiffs “could, theoretically, prove that the [congressional redistricting] Plan would establish a ‘projected history’ of disproportionate results”).

99. “[E]ven if a state legislature redistricts with the specific intention disadvantaging one political party’s election prospects, we do not believe that there has

been an unconstitutional discrimination against members of that party unless the redistricting does in fact disadvantage it at the polls.” *Bandemer*, 478 U.S. at 139 (emphasis added). Accordingly, consistent with the principle that “the narrowest ground is the holding of the Court.” *Boyes*, 199 F.3d at 1268 n.16, a holding of *Bandemer* is that political gerrymandering claim is not justiciable until at least one election has occurred. Here no elections have occurred. Therefore, for this reason as well, the partisan gerrymandering claims must be rejected.

*Maurer, the Martinez Plaintiffs, and the Deutsch Intervenors Failed  
to Establish Unlawful Partisan Gerrymandering*

100. In *Bandemer*, the Supreme Court held that “a group’s electoral power is not unconstitutionally diminished by the simple fact of an apportionment scheme that makes winning elections more difficult, and a failure of proportional representation alone does not constitute impermissible discrimination under the Equal Protection Clause” 478 U.S. at 132. As set forth above, Maurer, the Martinez Plaintiffs, and the Deutsch Intervenors failed to prove their equal protection-based partisan gerrymandering claims.

101. As for the Martinez Plaintiffs’ and the Deutsch Intervenors’ ancillary claims, it is clear that “the mere failure to use politically neutral redistricting principles [does not] violates the Equal Protection Clause. . . . The Supreme Court has in fact consistently acknowledged that political considerations inevitably play a major role in redistricting decisions.” *O’Lear*, 2002 WL 1052046 at \*5 n.5. And, “section 2 does not protect against partisan gerrymandering,” *id.* at \*6 n.6.

102. Article I, § 2—raised in Count I of the Complaint-in-Intervention—provides no basis for a political gerrymandering claim. Article I, § 2 only protects the right to vote in that each persons vote is entitled to equal weight under the law.

“Adopting any standard other than population equality, using the best census data available, [*Kirkpatrick v. Preisler*] 394 U.S. [526,] 532, [] would subtly erode the Constitution’s ideal of equal representation.” *Karcher v. Daggett*, 462 U.S. 725, 731 (1983). The congressional redistricting plan challenged by the Deutsch Intervenors satisfies the irreducible minimum of the one-person-one-vote requirement, having districts that deviate only by a single person. Nothing more is required by Article I, § 2, and allowing claims of partisan gerrymandering to impact that requirement would violate the principles established by the Supreme Court in *Karcher*.

103. The Privileges and Immunities Clause protects against discrimination on the basis of state citizenship and similarly fails to support a partisan gerrymandering claim. The Deutsch Intervenors’ claims in Count III are practically identical to those raised by the plaintiffs in *O’Lear* and *Vieth*. The *O’Lear* court specifically noted that “we can find no overt support for the proposition that the privileges and immunities clause protects the right to fair representation or the right to an effective vote.” *O’Lear*, 2002 WL 1052046 at \*7. In *Vieth*, the court categorically rejected the Privileges and Immunities claim:

Plaintiffs, however, do not explain how the right to travel, which apparently is protected in some part by the Privileges and Immunities Clause, translates into a right to have proportional representation with Republican voters. Simply put, the Privileges and Immunities Clause, which protects against discrimination on the basis of state citizenship, has nothing to do with this case.”

188 F. Supp. 2d at 548.

104. Finally, the First Amendment is also inapplicable to the Deutsch Intervenors’ partisan gerrymandering claims in Count IV. With respect to voting rights claims, “the First . . . Amendment[] afford[s] no greater protection for voting rights

claims than that already provided by the Fourteenth and Fifteenth Amendments . . . .” *Burton v. City of Belle Glade*, 178 F.3d 1175, 1187 n.9 (11th Cir. 1999). Accordingly, since the Deutsch Intervenors do not have a claim under the Fourteenth Amendment, their First Amendment claim is equally unavailing. Indeed, in *O’Lear*, the court held that “[p]artisan gerrymandering by itself . . . does not support either a freedom of speech or a freedom of association claim,” *id.* at \*6 (citing *Washington v. Finlay*, 664 F.2d 913, 928 (4th Cir. 1981)).

105. The claims of partisan gerrymandering raised by Maurer, the Martinez Plaintiffs, and the Deutsch Intervenors rest entirely on assertions that the anticipated effect of the congressional redistricting plan will create a disparity between the claimed 50/50 split in Florida’s voters between the Republican and Democratic parties as supposedly exemplified by the results of the 2000 presidential election and the expected 19-6 or 18-7 Republican-Democratic split in Florida’s 2002 congressional delegation. These allegations and the proof at trial fail to support any of the partisan gerrymandering claims. Accordingly, under the principles established in *Bandemer*, defendants are entitled to judgment in their favor on these claims.

#### **THE SECTION 5 CLAIM**

106. With the decision in the D.C. District Court Action dismissing that action as moot in the face of the claims by Martinez plaintiffs that raise Count XV as well as the claims of certain of the Deutsch Intervenors, the § 5 claims must be rejected.

107. Moreover, the manner in which a State chooses to make its Section 5 submission does not constitute a voting practice or procedure within the meaning of Section 5, which requires pre-clearance for, *inter alia*, any new “voting qualification or

prerequisite to voting, or standard, practice or procedure with respect to voting.” 42 U.S.C. § 1973c.

108. In *Presley v. Etowah County Comm’n*, 502 U.S. 491 (1992), the Supreme Court addressed the scope of § 5, explaining that that the changes in voting practice or procedure embraced by the pre-clearance provisions of the Act must have “a direct relation to voting and the election process.” *Id.* at 503; *Holley v. Roanoke*, 149 F. Supp. 2d 1310, 1312 (M.D. Ala. 2001). The Court recognized four broad categories illustrating the Act’s coverage: (1) changes involving the manner of voting; (2) changes involving candidacy requirements and qualifications; (3) changes in the composition of the electorate that may vote for candidates for a given office; and (4) changes affecting the creation or abolition of an elective office. *See* 502 U.S. at 502-03; *see also Holley*, 149 F. Supp. 2d at 1313.

109. Submission pursuant to § 5 by the Governor, the Speaker, and the President does not have a “direct relation to voting and the election process.” Therefore, the submission by these defendants does not constitute a voting practice or procedure within the terms of Section 5 for which pre-clearance was required.

#### **THE OPEN PRIMARY CLAIM**

110. Attempting to substantiate their vote dilution claims, the Martinez Plaintiffs contend that the enactment of § 100.061, Fla. Stat. (2001), which eliminates run-off elections in primaries for the Fall 2002 elections, coupled with Art. VI, § 5 of the Florida Constitution, which provides for an open primary in particular situations,<sup>37</sup>

---

<sup>37</sup> Art. VI, § 5(b) of the Florida Constitution provides, with respect to primary, general, and special elections, that:

“further compound[s] the dilution and retrogression of the Black vote caused by the newly adopted Congressional plan.” SAC at ¶¶ 91-92. However, the Martinez Plaintiffs failed to demonstrate that these provisions affect the alleged dilution and retrogression of the Black vote in any district. In fact, the evidence before the Court demonstrates that no primary in a challenged district will be open and, therefore, that these provisions are not implicated in these proceedings.<sup>38</sup>

111. Furthermore, the Martinez Plaintiffs’ reliance on *California Democratic Party v. Jones*, 530 U.S. 567 (2000), is unavailing. In *Jones*, the Supreme Court was asked to address the constitutionality under the First Amendment of a California law changing California’s closed partisan primary system to a blanket primary in which all persons entitled to vote, including those not affiliated with any political party, would

---

(b) If all candidates for an office have the same party affiliation and the winner will have no opposition in the general election, all qualified electors, regardless of party affiliation, may vote in the primary elections for that office.

<sup>38</sup> The Court notes that the Martinez Plaintiffs’ assertion that the Open Primary provision creates a § 2 violation contradicts the very purposes of the Voting Rights Act, which is intended to create an opportunity to compete, not a guarantee that a minority candidate will always emerge from the electoral process victorious. Taken to its necessary conclusion, only a district with a minority registration of 100% would be immune to a § 2 challenge because a state can not lawfully control the number of minority or non-minority candidacies. As a result, a sufficiently fractured minority vote could enable a single non-minority candidate to win any election. Under the Martinez Plaintiffs’ interpretation of § 2, that possibility constitutes a violation of the Voting Rights Act. Of course, the Court finds such an interpretation of the Voting Rights Act to be erroneous as it ignores the fact that minorities are not immune to the requirement that they “pull, haul, and trade, to find common political ground . . . the virtue of which is not to be slighted in applying a statute meant to hasten the waning of racism in American politics.” *De Grandy*, 512 U.S. at 1020..

have the right to vote in the primary, which was not necessarily the final and determinative election for the office in question. *Id.* at 570.

112. In upholding the political parties' challenge to the blanket primary law, the Court observed that the First Amendment associational rights of a political party to exclude non-members from voting did not collide with another independent constitutional provision such as the right to vote: "Selecting a candidate is quite different from voting for the candidate of one's choice. If the 'fundamental right' to cast a meaningful vote were really at issue in this context, Proposition 198 would be not only constitutionally permissible, but constitutionally required, which no one believes." *Id.* at 573 n.5.

113. Florida's Open Primary provision only applies where a voter registered for one party would be barred from having an effective vote whatsoever. It only applies where a candidate will have "no opposition in the general election," Fla. Const. Art. VI, §5(b); *i.e.*, when the vote of voter registered for a party other than that of the candidate running unopposed in the general election would have absolutely no effect. In the situation when the Open Primary provision applies, the primary election is the final and determinative election, because the primary candidate has no opposition in the general election and is alone on the ballot. Accordingly, if pressed to decide this issue, the Court would be compelled to find that the provision was "not only constitutionally permissible, but constitutionally required."<sup>39</sup>

---

<sup>39</sup> Indeed, the Court notes that the Martinez Plaintiffs' position on this issue is inherently contradictory. On the one hand, they assert that a candidate's facilitation of a write-in to close a primary would constitute "voter fraud"; on the other, they assert that having an open primary is in itself unconstitutional.

114. Furthermore, the Martinez Plaintiffs have failed to present any evidence whatsoever as to the intent of the Legislature on this issue; therefore, to the extent that the Open Primary claim is based upon a challenge brought under the Fourteenth Amendment, it must fail.

**CONCLUSION**

115. Maurer, the Martinez Plaintiffs, and the Deutsch Intervenors failed to present any evidence to support a substantial number of their claims, failed to establish the elements of a *prima facie* case for the majority of their claims, and failed to prove the claims on which they did establish a *prima facie* case. Therefore, defendants the State of Florida, Governor Jeb Bush, Speaker of the Florida House Tom Feeney, President of the Florida Senate John McKay, Florida Attorney General Robert Butterworth, and Florida Secretary of State Katherine Harris are entitled to judgment in their favor on the merits.

Maurer v. Florida  
Case No. 02-10028 CIV-JORDAN  
Martinez v. Bush  
Case No. 02-20244 CIV-JORDAN

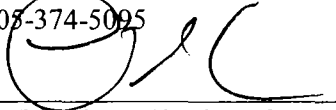
The Court reserves jurisdiction to address any claims for costs or attorneys' fees defendants may seek to assert.

Respectfully submitted,

**COLSON HICKS EIDSON**  
255 Aragon Avenue — Second Floor  
Coral Gables, FL 33134-5008  
Tel.: 305-476-7400  
Fax: 305-476-7444

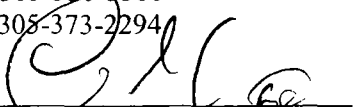
By:   
Dean Colson, Esq.  
Florida Bar No. 228702  
E-mail: [dean@colson.com](mailto:dean@colson.com)  
Roberto Martinez, Esq.  
Florida Bar No. 305596  
E-mail: [bob@colson.com](mailto:bob@colson.com)  
Maureen E. Lefebvre, Esq.  
Florida Bar No. 475874  
E-mail: [mel@colson.com](mailto:mel@colson.com)

**AKERMAN, SENTERFITT & EIDSON, P.A.**  
SunTrust International Center, 28th Floor  
One Southeast Third Avenue  
Miami, Florida 33131-1704  
Tel.: 305-374-5600  
Fax: 305-374-5095

By:   
Joseph W. Hatchett, Esq.  
Florida Bar No. 34486  
E-mail: [jhatchett@akerman.com](mailto:jhatchett@akerman.com)  
J. Thomas Cardwell, Esq.  
Florida Bar No. 099080  
E-mail: [tcardwell@akerman.com](mailto:tcardwell@akerman.com)  
Christopher S. Carver, Esq.  
Florida Bar No. 993580  
E-mail: [ccarver@akerman.com](mailto:ccarver@akerman.com)

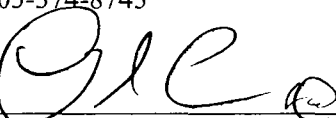
*Counsel for the Governor*

**COLE, SCOTT & KISSANE, P.A.**  
1390 Brickell Avenue  
3rd Floor  
Miami, FL 33131  
Tel.: 305-350-5300  
Fax: 305-373-2294

By:   
Thomas E. Scott, Esq.  
Florida Bar No. 149100  
E-mail: [scott@csklegal.com](mailto:scott@csklegal.com)

*Counsel for the President*

**MIGUEL DE GRANDY, P.A.**  
The Miami Center  
201 South Biscayne Boulevard  
Miami, Florida 33186  
Tel.: 305-374-6565  
Fax: 305-374-8743

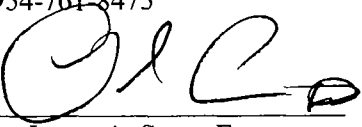
By:   
Miguel A. De Grandy, Esq.  
Florida Bar No. 332331  
E-mail: [mad@degrandylaw.com](mailto:mad@degrandylaw.com)  
Stephen M. Cody, Esq.  
Florida Bar No. 334685  
E-mail: [stcody@bellsouth.net](mailto:stcody@bellsouth.net)

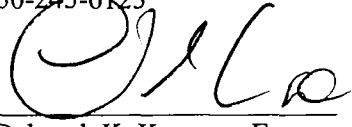
*Counsel for the Speaker*

*Maurer v. Florida*  
Case No. 02-10028 CIV-JORDAN  
*Martinez v. Bush*  
Case No. 02-20244 CIV-JORDAN

**TRIPP SCOTT, P.A.**  
110 S.E. 6th Street  
15th Floor  
Ft. Lauderdale, FL 33301  
Tel.: 954-525-7500  
Fax: 954-761-8475

**FLORIDA DEPARTMENT OF STATE**  
General Counsel's Office  
PL-02, The Capitol  
Tallahassee, FL 32399-0250  
Tel.: 850-245-6517  
Fax: 850-245-6125

By:   
James A. Scott, Esq.  
Florida Bar No. 109120  
E-mail: [jas@trippscott.com](mailto:jas@trippscott.com)  
Edward J. Pozzuoli, Esq.  
Florida Bar No. 717363  
E-mail: [ejp@trippscott.com](mailto:ejp@trippscott.com)  
Alexis M. Yarbrough  
Florida Bar No. 0086861  
E-mail: [amy@trippscott.com](mailto:amy@trippscott.com)

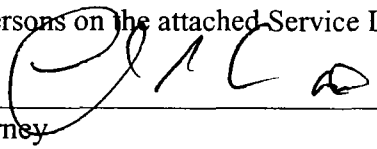
By:   
Deborah K. Kearney, Esq.  
Florida Bar No. 0334820  
E-mail: [dkearney@mail.dos.state.fl.us](mailto:dkearney@mail.dos.state.fl.us)

*Counsel for the Secretary*

*Counsel for the President*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that true and correct copies of *The Governor's, the Speaker's, the President's, and the Secretary's Amended Proposed Findings of Fact and Conclusions of Law* were served by e-mail prior to 9:00 a.m. on the 24th day of June, 2002, and served by U.S. Mail on June 24, 2002, on the persons on the attached Service List.

  
\_\_\_\_\_  
Attorney

**SERVICE LIST**  
(as of June 24, 2002)

*Martinez v. Bush*, Case No. 02-20244 CIV-JORDAN/Bandstra  
*Maurer v. Florida*, Case No. 02-10028 CIV-JORDAN/Brown

Dean Colson, Esq.  
Roberto Martinez, Esq.  
Colson Hicks Eidson  
255 Aragon Avenue  
Miami, Florida 33134-5008  
Tel.: 305-476-7400  
Fax: 305-476-7444

Deborah K. Kearney, Esq.  
General Counsel  
Florida Department of State  
PL-02, The Capitol  
Tallahassee, FL 32399-0250  
Tel.: 850-245-6517  
Fax: 850-245-6125

Charles Canady, Esq.  
Carlos Muñiz, Esq.  
General Counsel for Governor Jeb Bush  
Office of the Governor  
The Capitol, Room 209  
Tallahassee, FL 32399-0001  
Tel.: 850-488-3494  
Fax: 850-488-9810

*Counsel for the Secretary*  
  
George N. Meros, Jr., Esq.  
Jason L. Unger, Esq.  
Gray, Harris & Robinson, P.A.  
P.O. Box 11198  
Tallahassee, FL 32302-3189  
Tel.: 850-577-9090  
Fax: 850-577-3311

*Counsel for the Governor*

Thomas E. Scott, Esq.  
Cole, Scott & Kissane, P.A.  
1390 Brickell Avenue  
3rd Floor  
Miami, FL 33131  
Tel.: 305-350-5300  
Fax: 305-373-2294

*Co-counsel for the Speaker*

Paul F. Hancock, Esq.  
Deputy Attorney General  
110 S.E. 6th Street  
Ft. Lauderdale, FL 33301  
Tel.: 954-712-4600  
Fax: 954-712-4658

James A. Scott, Esq.  
Edward J. Pozzuoli, Esq.  
Alexis M. Yarbrough, Esq.  
Tripp Scott, P.A.  
110 S.E. 6th Street  
15th Floor  
Ft. Lauderdale, FL 33301  
Tel.: 954-525-7500  
Fax: 954-761-8475

Daniel S. Dearing, Esq.  
Senior Assistant Attorney General  
Office of the Attorney General  
The Capitol, PL-01  
Tallahassee, FL 32399-1050  
Tel.: 850-414-3300  
Fax: 850-488-4872

*Counsel for the President*

Kathleen M. Burgener, Esq.  
Senior Assistant Attorney General  
110 S.E. 6<sup>th</sup> Street – 10<sup>th</sup> Floor  
Ft. Lauderdale, FL 33301  
Tel.: 954-712-4670  
Fax: 954-712-4700

*Counsel for the Attorney General*

Thomasina H. Williams, Esq.  
Williams & Associates, P.A.  
Brickell Bay View Centre  
Suite 1830  
80 S.W. 8th Street  
Miami, FL 33130  
Tel.: 305-379-6676  
Fax: 305-379-4541

Norman C. Powell, Esq.  
Bilzin Sumberg Dunn  
Baena Price & Axelrod LLP  
200 South Biscayne Boulevard  
Suite 2500  
Miami, FL 33131  
Tel.: 305-375-6144  
Fax: 305-375-6146

Ronald A. Klain, Esq.  
Jeremy B. Bash, Esq.  
Goodwin Liu, Esq.  
O'Melveny & Myers, LLP  
555 13th Street, N.W.  
Suite 500 West  
Washington, D.C. 20004  
Tel.: 202-383-5300  
Fax: 202-383-5414

*Counsel for Martinez Plaintiffs*

Terence J. Anderson, Esq.  
University of Miami School of Law  
Coral Gables, FL 33124-8087  
Tel.: 305-284-2253  
Fax: 305-284-6619

Burnadette Norris-Weeks, Esq.  
Law Office of  
Burnadette Norris-Weeks, P.A.  
100 S.E. 6th Street  
Ft. Lauderdale, FL 33301  
Tel. 954-768-9770  
Fax 954-768-9790

*Counsel for Plaintiff-Intervenors  
Deutsch, et al.*

Mr. George M. Maurer, Jr.  
#119-C  
1800 Atlantic Boulevard  
Key West, FL 33040  
Tel.: 305-294-6725  
Fax: 305-295-2861

*Pro se Plaintiff*