2002 Redistricting Case

SECTION TWO OF THE VOTING RIGHTS ACT HAD TO BE CONSIDERED. AND THEN THIS LEGISLATURE HAD TO PERFORM AS ANY OTHER LEGISLATURE PERFORMS ON ANY BIT OF LEGISLATION, THAT IS, THE REPRESENTATIVES HAD TO CONSIDER THE CONCERNS OF THE PEOPLE AND THEIR OWN CONCERNS IN DRAWING THESE DISTRICTS. AND THERE ARE NO OTHER STANDARDS THAT APPLY. AND WHEN ASKED ABOUT THESE STANDARDS, THE ATTORNEY GENERAL HIMSELF AGREES WITH EVERY ONE. IS THIS PLAN SUBJECT TO ATTACK ON THE BASIS OF ONE PERSON, ONE VOTE? NO, IT IS NOT. THE ATTORNEY GENERAL SAYS SO IN HIS BRIEF AT PAGE 20. I'M READING FROM HIS BRIEF. THE PROPOSED REAPPORTIONMENT OF THE HOUSE AND SENATE SHOULD SATISFY THE ONE PERSON, ONE VOTE STANDARD OF THE 14TH AMENDMENT.

TO THE EXTENT THAT A CHARGE WAS GIVEN TO THE HOUSE, DO YOU FEEL THAT YOU HAVE COMPLETELY OUTLINED WHAT CHARGE THE LEADERSHIP GAVE TO ITS MEMBERSHIP AS FAR AS HOW THESE DISTRICT LINES WOULD BE DRAWN?

YES, YES, SIR.

WHAT YOU JUST OUTLINED IS THE ONLY CHARGE THAT WAS GIVEN TO THE HOUSE IN TERMS OF DRAWING DISTRICT LINES?

I'M SORRY, IT IS NOT THE ONLY CHARGE. NO. IN THE FIRST FOUR VOLUMES, SPECIFICALLY VOLUME 4 OF OUR APPENDIX TO OUR BRIEF, YOU WILL FIND THE TESTIMONY OF REPRESENTATIVE BALL, WHO IS CHAIRMAN OF THE COMMITTEE. AND THERE YOU WILL FIND HIM SPEAKING OF MANY CONCERNS, CONCERNS NOT STANDARDS. AND THOSE CONCERNS WERE, FOR EXAMPLE, COMPACT DISTRICTS. CORE OF INTEREST AND COMMUNITY INTEREST BEING HELD TOGETHER. MANY, MANY CONCERNS THAT THE LEGISLATORS HAD.

MANY OF THE COMMENTS OR RESPONSES THAT WE HAVE RECEIVED AS FAR AS YOU INDICATE, YOU HAVE OUTLINED THE TWO CATEGORIES IN A SENSE OF RESPONSES, THERE WAS EXTENSIVE PUBLIC TESTIMONY TAKEN AROUND THE STATE, AM I CORRECT?

YES, YOU ARE.

COULD YOU TELL US WHAT THE PURPOSE OF THAT WAS AND RELATE IT TO THESE INDIVIDUALS' OBJECTIONS OR CONCERNS THAT HAVE BEEN EXPRESSED? AND AS AN EXAMPLE, COLLIER COUNTY HAS FILED A RESPONSE HERE AND SAID, YOU KNOW, THERE WERE PUBLIC HEARINGS AND OUR LEADERSHIP IN COLLIER COUNTY CAME FORWARD AND IN ESSENCE, EVERYONE FROM COLLIER COUNTY TESTIFIED THAT WE HAVE A VERY HEALTHY AND VIBRANT COMMUNITY IN COLLIER COUNTY. THAT WE SHARE INTERESTS ABOUT OUR SCHOOLS, MEDICAL CARE, ALL THE INTERESTS THAT A GROUP OF PEOPLE COMING TOGETHER IN A COMMUNITY WOULD SHARE. THEREFORE, WE WANT TO BE REPRESENTED IN THE HOUSE, IN THE SENATE, IN A COMPACT COMMUNITY OF INTEREST WAY. COULD YOU RESPOND IN TERMS OF THOSE, TAKING OF TESTIMONY, WHAT IMPACT THAT WOULD HAVE ON THE DRAWING OF LINES, AND TO CONCERNS THAT I BELIEVE ARE exemplified BY THE CONCERNS OF COLLIER COUNTY RESIDENTS.

YES, MR. JUSTICE. THE HOUSE AND SENATE HELD 24 PUBLIC HEARINGS AROUND THE STATE. AT THOSE HEARINGS THEY PASSED OUT PACKETS REGARDING REDISTRICTING MAPS, AND EVERYTHING THAT A CITIZEN WOULD NEED TO KNOW ABOUT THE REDISTRICTING PROCESS. THE

PURPOSE OF THOSE HEARINGS TO GET THE REPRESENTATIVES INFORMED OF THE CONCERNS OF THE CITIZENS IN THE AREA. THEY WERE EDUCATING THEMSELVES ABOUT THE AREAS AT WHICH THEY WERE GOING TO DRAW THE MAPS. AND WANTED TO MAKE SURE THAT THE CONCERNS OF THOSE PEOPLE WERE KNOWN AND EMBODIED IN THE ACTIVITY THAT WENT ON IN THE LEGISLATURE. I MIGHT POINT OUT THERE IS NO RIGHT ON THE PART OF A VOTER TO HAVE ANY PARTICULAR DISTRICT OR TO LIVE IN ANY PARTICULAR DISTRICT. THIS IS NO CONSTITUTIONAL RIGHT OR NO RIGHT UNDER ANY STATUTE. BUT THE WHOLE PURPOSE OF THOSE PUBLIC HEARINGS WERE TO INFORM THE REPRESENTATIVES SO THEY COULD COME BACK TO TALLAHASSEE AND EXPRESS THOSE CONCERNS IN COMMITTEE MEETINGS ON THE FLOOR OF THE HOUSE AND IN DRAWING THE PLAN.

REPRESENTATIVE RYAN AND WHAT HE HAS FILED AS WELL AS MAYOR MARTINEZ IN HIALEAH, BOTH ATTACKED THE MINORITY REPRESENTATION IN THE VARIOUS HOUSE DISTRICTS. AND THIS HAS BEEN AN ALLEGATION THAT IN FACT THERE IS NOT A EQUATION BETWEEN THE PERCENTAGE OF MINORITIES IN THOSE -- IN THE STATE POPULATION WITH THE MINORITY DISTRICTS. AND I WONDER IF YOU WOULD ADDRESS THOSE ISSUES.

YES, I WILL, YOUR HONOR. IN THE HOUSE PLAN, THERE ARE 13 AFRICAN-AMERICAN MAJORITY minority districts. THERE ARE 11 HISPANIC MAJORITY MINORITY DISTRICTS. THOSE ARE DISTRICTS WHERE THERE ARE PERCENTAGES OF THE LANGUAGE AND RACIAL MINORITIES. AND THIS, I MIGHT ADD THAT IN THE LAST TIME IN 92, THE SAME NUMBER FOR AFRICAN-AMERICAN DISTRICTS WERE PRESENT, 13. FOR HISPANICS, IT WENT UP TO, WAS 9 IN 1992. IT IS NOW 11. AND ONE OF THOSE DISTRICTS GREW BY NATURAL INCREASE IN HISPANIC POPULATION. SO IT WAS AT 10 AND ONE MORE WAS ADDED. WHAT WE HAVE WHEN WE TALKED ABOUT THE MARTINEZ COMMENTERS, THEY'RE COMMENTING ABOUT VOTING AGE, BLACK AND HISPANIC VOTING AGE. WELL, TO TALK ABOUT VOTING AGE WITHOUT ANY OTHER CIRCUMSTANCE TELLS YOU VERY, VERY LITTLE. FOR EXAMPLE, IF YOU WERE TO GO TO A HISPANIC DISTRICT IN SOUTH FLORIDA, THE VOTING AGE POPULATION MAY BE VERY, VERY HIGH. BUT THAT TELLS YOU NOTHING ABOUT HOW THE DISTRICT WILL OPERATE BECAUSE MANY OF THOSE PEOPLE WILL NOT EVEN BE CITIZENS OF THE UNITED STATES, NOT EVEN TO MENTION NOT BEING REGISTERED VOTERS. AND EVEN IF YOU KNEW WHETHER THEY WERE CITIZENS OF THE UNITED STATES AND KNEW HOW MANY WERE REGISTERED VOTERS, UNTIL YOU HAD AN ELECTION, YOU WOULDN'T KNOW HOW THAT DISTRICT WOULD OPERATE. SO THE ATTACK BASED UPON VOTING AGE POPULATION DOESN'T TELL US ANYTHING. AND AS I RECALL, THE MARTINEZ COMMENTERS SPECIFICALLY TALKED ABOUT VOTING AGE POPULATION. BUT LET'S SAY THAT THE VOTING AGE POPULATION DID GO DOWN IN A DISTRICT. THAT HAS NOTHING TO DO WITH THE DRAWING OF A MAP. NOW IT COULD OR IT COULD NOT. FOR EXAMPLE, IF YOU HAPPEN TO REMEMBER EVERY DISTRICT HAD TO BE REDRAWN BECAUSE POPULATION WENT UP. POPULATION NOW IS 133,186 PER DISTRICT. SO YOU HAD TO REDRAW THOSE DISTRICTS. YOU HAD TO GET PEOPLE FROM ONE DISTRICT AND MOVE THEM INTO ANOTHER. IN SAY JACKSONVILLE, FOR EXAMPLE, THE VOTING AGE POPULATION COULD GO DOWN BY YOU SIMPLY MOVING LINES FOR TWO BLOCKS. THAT IS, MOVEMENT AWAY FROM SENIOR CITIZEN HOME CLOSE TO A MILITARY BASE, YOU WOULD -- VOTING AGE WOULD GO DOWN BECAUSE YOUNG PEOPLE IN THE MILITARY HAVE CHILDREN AND THEY'RE USUALLY YOUNGER THAN OLDER PEOPLE. SO IF YOU'RE TALKING ABOUT A COMMUNITY WITH A LOT OF SENIOR CITIZENS, VOTING AGE POPULATION IS UP. IF YOU HAVE YOUNGER PEOPLE, VOTING AGE POPULATION IS DOWN. SO, TO TALK ABOUT VOTING AGE POPULATION DECREASING OR INCREASING REALLY HAS NO SIGNIFICANCE UNLESS YOU KNOW EVERYTHING ELSE ABOUT THE DISTRICT.

BUT MR. HATCHETT, IN 1992, YOU HAD 13 MAJORITY MINORITY DISTRICTS. IN 92, YOU HAVE 13 UNDER THE Purdy PROPOSAL. YET, AFRICAN-AMERICAN POPULATION HAS INCREASED FROM 13.6 TO 14.6. AND IDEALLY THIS WOULD GIVE A 17 TO 18 MINORITY -- MAJORITY MINORITY DISTRICT. AND THAT A RETROGRESSION HOW -- WOULD YOU LIKE TO COMMENT ON THAT?

YES. I WOULD. YOUR HONOR, THAT IS NOT A RETROGRESSION. IN THE CENSUS, AFRICAN-AMERICAN POPULATION WENT UP ONE PERCENT. HISPANIC POPULATION WENT UP 4.6%. BUT TO DRAW A MAJORITY MINORITY DISTRICT, YOU HAVE TO HAVE THE POPULATION COMPACT IN THE SAME AREA. SO ONE PERCENT INCREASE IN AFRICAN-AMERICANS OCCUR ALL OVER THE STATE, THEN YOU WOULD NOT HAVE AN AREA IN WHICH YOU CAN DRAW A MAJORITY MINORITY DISTRICT. KEEPING IN MIND THAT IT TAKES 133,000 VOTERS TO CONSTITUTE A DISTRICT. NOT ONLY THAT, UNDER SECTION TWO, YOU MAY ONLY DRAW A MAJORITY MINORITY DISTRICT IF YOU FIND THAT THE RESIDENTS IN THAT DISTRICT, THE MINORITIES IN THAT DISTRICT ARE POLITICALLY COHESIVE. IF THEY'RE NOT POLITICALLY COHESIVE, EVEN IF THEY HAVE THE NUMBERS UNDER THE LAWS YOU CAN'T DRAW MAJORITY MINORITY DISTRICT. EVEN IF YOU HAVE A LARGE CONCENTRATION OF MINORITIES IN THE SAME AREA WHO ARE POLITICALLY COHESIVE AND THE MAJORITY OF THE VOTERS IN THAT DISTRICT ARE NOT VOTING AS A BLOCK, THE LAW WILL NOT ALLOW YOU TO FORM A MAJORITY MINORITY DISTRICT. SO TO HAVE A MAJORITY MINORITY DISTRICT, NUMBER ONE, THE PERSONS IN THAT DISTRICT MUST SHOW THAT THERE IS SOMETHING IN THE SYSTEM THAT IS KEEPING THEM FROM ELECTING THE CANDIDATE OF THEIR CHOICE.

FACT FINDING TO SEE IF THERE IS SOMETHING IN THE SYSTEM THAT'S CAUSING THIS, BECAUSE YOU CAN END UP WITH SUPER MINORITY DISTRICTS. AS OPPOSED TO ONE, A DISTRICT WHERE MINORITIES COULD HAVE AN OPPORTUNITY TO ELECT REPRESENTATIVES OF THEIR CHOICE. IS THIS SOMETHING WE OUGHT TO BE TAKING UP HERE IN THE REDISTRICTING OR IS THIS SOMETHING THAT SHOULD GO INTO THE COURT SYSTEM?

WE THINK THAT THIS COURT IS ABSOLUTELY RIGHT IN 1992, WHEN YOU SAID THAT YOU WOULD LOOK AT SECTION TWO OF THE VOTING RIGHTS ACT AS A HYBRID TYPE OF ANALYSIS. YOU STATED IN YOUR OPINION THAT YOU DID NOT HAVE THE TIME, NOR THE RESOURCES TO DO WITHIN THE TIME ALLOTTED YOU THE JOB THAT IT WOULD TAKE TO DO A COMPLETE ANALYSIS UNDER SECTION TWO. AND WE'RE SHOWING YOU THAT THAT IS RIGHT. AS WE UNDERSTAND THE FLORIDA CONSTITUTION, THIS COURT MUST FILE ITS OPINION BY MAY THE 8TH IN THIS REDISTRICTING PROCESS. TO DO A SECTION TWO WOULD REQUIRE, FOR EXAMPLE, THAT THE, SOMEONE, THE PLAINTIFFS, OR THE PROTESTERS HERE, COME IN AND SHOW FIRST OF ALL THE GINGLES, WHAT WE CALL THRESHOLD FACTORS. I HAVE JUST ENUMERATED THEM. LARGE SUBSTANTIAL POPULATION IN ONE AREA, POLITICAL COHESIVE GROUP, ADD NO BLOCK VOTING AND BLOCK VOTING ON THE OTHER SIDE. THEN THERE ARE 13 OTHER FACTORS UNDER THORNGRADE VERSUS GINGLES YOU WOULD HAVE TO CONSIDER. TAKE FACT, WEIGHS THOSE FACTS AND THEN DECIDE UNDER THE TOTALITY OF THE CIRCUMSTANCES WHETHER A CLAIM HAD BEEN MADE. AND THAT'S WHAT'S WRONG HERE TODAY WITH THE MARTINEZ PETITIONERS AND THE OTHER PETITIONERS. IF THEY WERE TO GO OUT THIS DOOR AND FILE A REAL SECTION TWO CLAIM, FIRST OF ALL, THEY WOULD NEVER GET STARTED BECAUSE THEY WOULD HAVE TO SHOW STANDING. THEY WOULD HAVE TO SHOW STANDING. AS I UNDERSTAND IT, MAYOR MARTINEZ LIVES IN HIALEAH. YET HE'S BEFORE THIS COURT MAKING A COMPLAINT AGAINST AN AFRICAN-AMERICAN MAJORITY MINORITY DISTRICT IN JACKSONVILLE. THE OTHER PETITIONER IN THAT CASE, MR. CURRY, IS COMPLAINING ABOUT A CUBAN AMERICAN MAJORITY DISTRICT IN ORLANDO. AND IF YOU ACCEPT WHAT THESE PROTESTERS SAY, THEY COULD COME HERE AND SIMPLY WAVE THEIR ARMS AND TELL YOU THAT DISTRICT LOOKS FUNNY, IT DOESN'T LOOK THE WAY A REAL DISTRICT SHOULD. AND THAT'S WHY THIS COURT WAS SO WISE WHEN IT SAID IN 92, WE'LL DO AN ON-THE-FACE EVALUATION AND WE WILL HOLD OPEN THE JURISDICTION OF THIS COURT TO GET INTO --.

I ASSUME WHAT YOU'RE SAYING IS THAT A RESIDENT WITHIN THAT DISTRICT IN ORLANDO, OR A PERSON WHO DESIRED TO BE A CANDIDATE IN THAT DISTRICT IN ORLANDO WOULD GO INTO CIRCUIT COURT AND FILE A SUIT? THERE'S GOT TO BE A REMEDY.

INTO THE CIRCUIT COURT OR FEDERAL COURT SYSTEM. I'M SURE EVERYONE IN THIS COURTROOM

HAS SEEN IN THE NEWSPAPER THAT THERE IS A THREE JUDGMENTAL COURT SITTING TO HEAR ALL THESE SECTION TWO CLAIMS. BUT THE POINT IS THIS COURT CANNOT POSSIBLY HEAR SECTION TWO CLAIMS BY MAY THE 8TH. AND WE WOULD URGE THIS COURT TO DO JUST WHAT IT DID IN 92. THAT IS, RETAIN JURISDICTION FOR ANYONE TO COME LATER. LET ME POINT OUT ALSO THAT EVEN IF ONE OF THESE PROTESTERS WERE TO GO INTO THE CIRCUIT COURT AND PROVE A VIOLATION OF THAT PARTICULAR DISTRICT, HIS DISTRICT OR HER DISTRICT, IT WOULD NOT DESTROY EVERY DISTRICT IN THE STATE OF FLORIDA. AND YET THESE COMMENTERS COME TO YOU AND SAY I DON'T HAVE TO PROVE ANYTHING ABOUT MY DISTRICT, I DON'T HAVE TO SHOW THERE IS ANY VIOLATION ON MY PART AND YET I CAN DESTROY EVERY DISTRICT IN THE STATE OF FLORIDA.

MR. HATCHETT, ANOTHER COMPLAINT THAT WE HAVE SEEN ON THE PART OF THE NUMBER OF FILERS IN OPPOSITION IS A CLAIM OF POLITICAL GERRYMANDERING. COULD YOU ADDRESS THAT, TELL US WHETHER OR NOT THAT IS A VALID FACTOR TO BE CONSIDERED, IN OTHER WORDS, WHETHER OR NOT THE DRAWING OF DISTRICT LINES WOULD BE OBJECTIONABLE ON THE BASIS OF GERRYMANDERING FOR THE MAJORITY PARTY. AND HOW WE SHOULD ADDRESS THIS.

YES. GERRYMANDERING, POLITICALLY GERRYMANDERING IS A CONCERN FOR THIS COURT. HOWEVER, THERE IS A VERY, VERY HIGH BURDEN THESE COMMENTERS WOULD HAVE TO MEET TO SHOW POLITICALLY GERRYMANDERING. AND EVEN THE ATTORNEY GENERAL IN HIS BRIEF SAYS ONLY THAT IN TWO DISTRICTS, 86 AND 87, THERE IS POTENTIAL FOR GERRYMANDERING. IT DOESN'T EVEN MAKE A CLAIM OF GERRYMANDERING. HE SIMPLY SAYS THERE IS A POTENTIAL POSSIBILITY THAT SOMEONE WOULD RAISE THIS. BUT LET ME GIVE YOU THE FACTS TO DEFEAT ANY ARGUMENT ON GERRYMANDERING. ACCORDING TO THE STATISTICS IN THIS STATE, NO PARTY HOLDS THE MAJORITY. NO PARTY HOLDS A MAJORITY IN THE STATE OF FLORIDA. DEMOCRATS UNDER THESE PLANS ARE 43.46%. REPUBLICANS HAVE 39.18%. INDEPENDENTS HAVE 17.36%. UNDER THIS PLAN, 17 DISTRICTS, MAJORITY REPUBLICAN, 37 DISTRICTS ARE MAJORITY DEMOCRAT. 66 DISTRICTS NEITHER REPUBLICAN NOR DEMOCRAT. AND OF THOSE 66, INDEPENDENTS COMPRISE 18% OF THOSE DISTRICTS. LET ME TELL YOU WHAT HAPPENED. IF THESE DISTRICTS WERE VOTING TODAY, HERE IS WHAT WOULD HAPPEN. IN 2000, IN 69 OF THE COUNTIES, OF THE DISTRICTS, PRESIDENT GEORGE W. BUSH AND SENATOR BILL NELSON WOULD WIN. IN 1998, IF THESE DISTRICTS IN 81 OF THESE DISTRICTS, COMPTROLLER BOB Milligan THE REPUBLICAN WOULD WIN, AGRICULTURAL COMMISSIONER BOB CRAWFORD, WHO WAS THEN A DEMOCRAT, WOULD WIN. IN 1998, IN 110 OF THE 120 DISTRICTS, GOVERNOR JEB BUSH THE REPUBLICAN AND SENATOR BOB GRAHAM WOULD WIN OF DIFFERENT PARTIES. NO PARTY HAS A MAJORITY IN FLORIDA. NO ONE CAN PREDICT WHAT WILL HAPPEN. 10 YEARS AGO IN THIS COURTROOM, THE DEMOCRATS WERE IN CONTROL, THE REPUBLICANS CAME HERE AND THEY SAID OH, DON'T APPROVE THESE DISTRICT, IF YOU DO, WE WILL NEVER WIN OFFICE. REPUBLICANS WENT OUT AND WON 70 SEATS IN THE HOUSE. YOU CAN'T LOOK AT A MAP AND TELL HOW ANY DISTRICT IS GOING TO PERFORM.

MR. HATCHETT, I THINK YOUR TIME IS UP FOR YOUR ADDITIONAL PRESENTATION.

THANK YOU.

THANK YOU. MR. RICHARD.

MAY IT PLEASE THE COURT, MY NAME IS BARRY RICHARD, COUNSEL FOR THE FLORIDA SENATE. JOINING ME IS COUNCIL FOR THE SENATE, FORMER SENATE PRESIDENT JIM SCOTT. I'D LIKE TO BEGIN IF I MAY BY ADDRESSING THE QUESTION THAT JUSTICE ANSTEAD ASKED INITIALLY OF JUDGE BLACK WITH REGARD TO THE ISSUE OF STANDARDS. MY RESPONSE IS MUCH THE SAME AS JUDGE HATCHETT'S WAS. FIRST OF COURSE THERE IS NO CONSTITUTIONAL REQUIREMENT, EITHER STATE OR FEDERAL OR ANY REQUIREMENT THAT HAS EVER BEEN ANNOUNCED IN THE LAW OF THIS STATE OR FEDERAL LAW THAT REQUIRES A LEGISLATURE OR THIS ONE IN PARTICULAR TO

ANNOUNCE IN ADVANCE SOME FORMAL SET OF SO-CALLED STANDARDS. THE QUESTION THAT THIS COURT NOW FACES IS, IS IT TO WRITE INTO THE FLORIDA CONSTITUTION A REQUIREMENT THAT SIMPLY DOESN'T EXIST? THAT HAVING BEEN SAID, THE FACT IS THAT THE FLORIDA SENATE DID HAVE STANDARDS. IT HAD TWO STANDARDS THAT AROSE OUT OF THE UNITED STATES CONSTITUTION. THE REQUIREMENT FOR ONE PERSON, ONE VOTE. THE STANDARD WHICH IT MET FAR BEYOND ANYTHING IN THE HISTORY OF THIS COUNTRY WHEN WE PRESENTED THIS COURT WITH STATISTICALLY A ZERO PERCENT DEVIATION FROM THE IDEAL NUMBER FOR THE FIRST TIME IN HISTORY. AND SECOND, NON-DISCRIMINATION, WHICH THE SENATE strove TO ACCOMPLISH AS IT IS REQUIRED TO DO. IT HAD A STANDARD UNDER THE FLORIDA CONSTITUTION OF CONTIGUITY, WHICH WE BELIEVE THAT IT MET. IT HAD A STANDARD, TWO STANDARD UNDER THE VOTING RIGHTS ACT, NON-DILUTION UNDER SECTION TWO AND NON-RETROGRESSION IN SECTION FIVE COUNTIES, WHICH IT ATTEMPTED AND WE BELIEVE IT SUCCEEDED IN MEETING.

WASN'T THERE THOUGH IMPLICIT ASSURANCE TO THE PEOPLE OF THE STATE OF FLORIDA, FOR INSTANCE, exemplified BY THE FACT THAT NUMEROUS PUBLIC HEARINGS WERE HELD THAT THERE WOULD BE OTHER STANDARDS CONSIDERED? SUCH AS COMMUNITY OF INTEREST AND EXISTING POLITICAL LINES. SO COULD YOU ADDRESS WHETHER IN FACT THERE WERE OTHER STANDARDS LIKE THOSE TAKEN UP BY THE SENATE? AND THEN ADDRESS SPECIFICALLY ONE OF THE MOST, IF I CAN SAY VISIBLE COMPLAINTS THAT WE HAVE DRAWN WITH THE SENATE'S DISTRICT, IS A DISTRICT IN SOUTH FLORIDA THAT REACHES ALL THE WAY FROM THE GULF ACROSS TO PALM BEACH COUNTY AND AROUND Lake Okeechobee. SO WOULD YOU ADDRESS THOSE THINGS? THAT IS THAT SURELY IMPLICIT IN THE HOLDING OF PUBLIC HEARINGS WAS THAT THERE WOULD BE MORE STANDARDS THAN JUST THE REQUIRED LEGAL STANDARDS AND THE EXISTING CASE LAW. AND THE DRAWING OF THAT PARTICULAR SENATE LINE.

YES, YOUR HONOR. IN FACT, THE RECORD WILL REFLECT, WE DON'T HAVE THE TIME TODAY TO REVIEW THE MYRIAD OF PAGES OF THE RECORD THAT DO REFLECT IT, BUT THE RECORD WILL REFLECT THAT THE LEGISLATURE DID ATTEMPT TO RESPECT COMMUNITIES OF INTEREST WHERE IT WAS PRACTICAL TO DO IT. THAT IT DID ATTEMPT TO MAINTAIN COUNTY AND CITY LINES WHERE IT WAS PRACTICAL TO DO IT. THE DIFFICULTY, AND THE UNITED STATES SUPREME COURT HAS EXPRESSLY RECOGNIZED IS THAT A LEGISLATURE ENGAGED IN THE REDISTRICTING PROCESS, WHICH IS ONE OF THE MOST DIFFICULT PROCESSES THAT A LEGISLATURE FACES, HAS GOT TO BALANCE MANY, MANY DIFFERENT ISSUES. AND THE PROBLEMS WITH WHAT YOUR HONOR IS ASKING ABOUT ARE THESE. MOST OF THE COMPLAINTS FROM THE SUBMISSIONS THAT WERE SUBMITTED TO THIS COURT WERE COMPLAINTS BY EITHER CITIES OR COUNTIES THAT SAID WE HAVE BEEN SPLIT UP AND WE DESIRE NOT TO BE. NOW WE HAVE TO ASSUME THAT WITHIN ANY CITY OR ANY COUNTY THERE IS GOING TO BE A VIEW BY AT LEAST SOME SEGMENT OF THAT COMMUNITY THAT IT OUGHT NOT TO BE SPLIT. BUT IT IS VIRTUALLY IMPOSSIBLE TO DRAW DISTRICT LINES THAT MEET THE ONE PERSON ONE VOTE REQUIREMENT THAT DO NOT SPLIT THEM. THAT'S THE FIRST PROBLEM. THE SECOND PROBLEM IS THAT COMMUNITIES OF INTEREST DON'T RESPECT CITY AND COUNTY LINES, WHICH ARE BASICALLY ARBITRARY AND DEVELOPED AS WE ALL KNOW THROUGH HISTORY FOR MANY, MANY DIFFERENT REASONS. IN FACT, IF ONE REVIEWS THIS RECORD, ONE WILL FIND THAT THERE WERE EFFORTS TO RESPECT COMMUNITIES OF INTEREST, ONE OF WHICH IS THE DISTRICT THAT YOUR HONOR MENTIONED, IN WHICH THE LEGISLATURE ATTEMPTED TO CARRY IT AROUND THROUGH AREAS THAT IT BELIEVED HAD COMMON COMMUNITIES OF INTEREST. BUT THEY DON'T RESPECT CITY AND COUNTY LINES HAVEN'T SO THEN THE QUESTION BECOMES WHERE THEY DO NOT, WHICH OF THE VIEWS DO YOU ACCEPT? TO MAINTAIN THE CITY COUNTY LINES OR COMMUNITIES OF INTEREST? THAT HAS TO BE AND IS A QUINTESSENTIAL LEGISLATIVE JUDGMENT. IT IS NOT A JUDGMENT FOR COURT TO MAKE OR INDIVIDUAL POLITICAL GROUP TO MAKE WITHIN THAT CITY OR COUNTY. ANOTHER INTERESTING ISSUE HERE YOUR HONOR IS THAT UNDER ARTICLE EIGHT OF THE FLORIDA CONSTITUTION, THE LEGISLATURE HAS THE POWER TO CREATE, TO ABOLISH OR TO CHANGE THE LINES OF THE COUNTIES AND THE CITIES. IT IS AN ABSOLUTE POWER. IT IS NOT A JUDICIAL POWER. IT IS NOT REVIEWABLE BY THE COURTS. LEGISLATURE HAS THAT POWER TO CHANGE THE

LINES OF THE CITY OR THE COUNTY, THEN SURELY THEY HAVE THE POWER TO DRAW DISTRICT LINES.

JUSTICE LEWIS, MR. RICHARD, WOULD YOU APPLY THE TWO STANDARDS YOU WERE JUST DISCUSSING TO DISTRICT 27 THAT WAS THE SUBJECT MATTER OF JUSTICE ANSTEAD'S QUESTION AS YOU SEE THEM APPLICABLE THERE?

WELL, AGAIN, IT IS EXTREMELY DIFFICULT FOR US IN THIS FORUM TO BE ABLE TO GET INTO THOSE DETAILS. BUT WHAT OCCURRED IN DISTRICT 27, IT NEEDED TO LOSE 7400 PERSONS. THAT'S THE FIRST CHALLENGE THAT THE LEGISLATURE HAD TO FACE. SO IT HAD TO REMOVE SOMETHING FROM THAT AREA. THE DISTRICT WAS TO BEGIN WITH A WIDE RANGING DISTRICT THAT COVERED A LARGE AREA AND CUT INTO MULTIPLE COUNTIES. THE LEGISLATURE HAD TO WEIGH VARIOUS DIFFERENT CONSIDERATIONS IN DECIDING WHERE TO RUN IT. IT IS NON-PRODUCTIVE AND IN FACT I'M NOT -- I DON'T HAVE THE CAPACITY TODAY TO MAKE A POLITICAL ARGUMENT THAT WOULD MEET THE OBJECTIONS AND THE CONSIDERATIONS OF EVERYONE OF THE POLITICAL INTERESTS IN THAT AREA THAT WOULD LIKE IT TO HAVE RUN ONE WAY OR ANOTHER. THE ONLY QUESTION FOR THIS COURT, WHICH HAS BEEN RECOGNIZED BY THIS COURT AND BY THE UNITED STATES SUPREME COURT, IS, WAS WHAT THE LEGISLATURE DID THERE VALID UNDER THE CONSTITUTIONS AND UNDER THE VOTING RIGHTS ACT? AND THERE HAS BEEN NO SUGGESTION MADE BY ANY OF THE OPPONENTS THAT WOULD LEAVE THIS COURT TO CONCLUDE THAT IT IS NOT VALID. IT WAS A POLICY DECISION BY THE LEGISLATURE. IT IS COMPACT IN THE SENSE OF, WHICH IS NOT A CONSTITUTIONAL REQUIREMENT OF THIS COURT IN 1972 RECOGNIZED AND AS THE UNITED STATES SUPREME COURT HAS RECOGNIZED, COMPACTNESS IS NOT A CONSTITUTIONAL REQUIREMENT. THE ATTORNEY GENERAL OF FLORIDA IN A BRIEF TO THE UNITED STATES SUPREME COURT IN FACT NOTED THAT COMPACTNESS WAS NOT EVEN A TRADITIONAL DISTRICTING PRINCIPLE IN THE STATE OF FLORIDA. NEVERTHELESS, IT IS COMPACT. IN THE SENSE IT DOESN'T HAVE TENTACLES RUNNING OUT IN EVERY DIRECTION IN ORDER TO BRING IN EITHER POLITICAL OR RACIAL GROUPS. IT SIMPLY WAS A LEGISLATIVE DETERMINES TO GO IN ONE DIRECTION INSTEAD OF ANOTHER DIRECTION. AND I SUGGEST TO THE COURT THAT WHILE AGAIN IT IS NOT FEASIBLE FOR US TO CITE THE RECORD AT THIS POINT, AND I DON'T HAVE IT AT MY FINGERTIPS, THE RECORD WILL REFLECT THAT THE LEGISLATURE DECIDED TO DO WHAT IT DID BECAUSE WHAT IT PERCEIVED TO BE REASONABLE COMMUNITIES OF INTERESTS IN THAT DISTRICT. THAT IS A LEGISLATIVE DETERMINATION. AND IF WE WERE TO BRING BEFORE THIS COURT EVERY INTEREST GROUP IN THE COUNTIES AFFECTED, THAT HAD DIFFERENT REASONS THAT THEY'D LIKE TO GO IN DIFFERENT DIRECTIONS, THEN WE BASICALLY WOULD BE SITTING AS A SUPER LEGISLATURE TO WEIGH THOSE VIEWS. WE CAN VISUALIZE EVERY COUNTY COMING BEFORE THIS COURT AND SAYING WE WANT TO KEEP OUR LINES TOGETHER. OR WE WANT TO BE CONNECTED TO THIS COUNTY ON THE RIGHT INSTEAD OF THE COUNTY ON THE LEFT. YOU CAN VISUALIZE EVERY CITY COMING BEFORE THIS COURT AND SAYING THAT. IT IS VIRTUALLY IMPOSSIBLE FOR US TO SATISFY THE DESIRES OF ALL OF THOSE INDIVIDUALS. AND THE DRAFTERS OF THE FLORIDA CONSTITUTION CONCLUDED, RIGHTFULLY SO, I BELIEVE, THAT THE BEST BODY TO WEIGH THOSE DECISIONS AND TO MAKE A DECISION WAS THE BODY THAT WAS CLOSEST TO THE PEOPLE OF THE STATE OF FLORIDA, AND THAT'S THE DIRECTLY ELECTED LEGISLATURE. AND THAT IS WHAT THEY DID. THAT IS WHAT THEY DID IN ALL THESE DISTRICTS. I'D LIKE TO ADDRESS TWO OTHER DISTRICTS AS BRIEFLY AS I CAN IN THE LIMITED TIME THAT WE HAVE. ONLY TO ILLUSTRATE THE PROBLEMS THAT THE LEGISLATURE FACED. AND THE ROBE I AM PARTICULARLY INTERESTED IN THESE TWO DISTRICT IS BECAUSE THERE WAS A SUGGESTION, ALTHOUGH INTERESTINGLY AND I THINK FOR THE FIRST TIME, SINCE 1972, FOR THE FIRST TIME THERE REALLY IS NO SUBSTANTIVE CONSTITUTIONAL CHALLENGES TO ANY OF THE SENATE DISTRICTS. ALMOST ALL OF THE STATEMENTS THAT ARE MADE END IN QUESTION MARKS. NOT AN exclamation POINT. BUT I'D LIKE TO ADDRESS DISTRICT ONE AND DISTRICT 18. AGAIN, THERE WAS NO DIRECT CHALLENGE TO DISTRICT ONE IN THE SENSE THAT ANYBODY SAYS THAT IT DID VIOLENT ANYTHING.

GIVE US A GEOGRAPHICAL IDENTIFICATION SO THAT WE ALL ARE ON THE SAME PAGE ABOUT

WHERE WE'RE TALKING ABOUT IN THE STATE.

IT RUNS THROUGH ALACHUA, CLAY, DUVAL, FLAGLER, ST. JOHNS AND VOLUSIA COUNTY. THIS WAS A DISTRICT THAT AS IT WAS APPROVED IN THE LAST REDISTRICTING WAS ITSELF A VERY STRANGE SHAPE. AND IT WAS ACTUALLY, AS EVEN THOUGH IT IS NOW CHALLENGED, IT ACTUALLY WAS STRAIGHTENED OUT AND MADE MORE COMPACT THIS TIME. IT NECESSARILY RUNS THROUGH A MULTITUDE OF COUNTIES BECAUSE OF THE NATURE OF THE POPULATION IN THOSE AREAS AND BECAUSE OF THE RACIAL MAKEUP OF THOSE AREAS. NOW WHAT HAPPENED HERE IS THERE WAS A SLIGHT REDUCTION IN THE AFRICAN-AMERICAN POP -- VOTING AGE POPULATION FROM 50.9% TO 46.6%. THE PROBLEM THAT THE LEGISLATURE FACED IN THAT DISTRICT WAS THIS. IT HAD TO GAIN 68,938 PERSONS. THE LARGEST DEVIATION IN THE STATE OF FLORIDA. IT HAD A DEVIATION OF OVER 17% UNDERSTOOD THE CURRENT DISTRICT. THE SURROUNDING DISTRICTS, BECAUSE OF CHANGES IN POPULATION, WERE ALL RELATIVELY LOW IN AFRICAN-AMERICAN POPULATION. THE LARGEST ONE BEING IN DISTRICT FIVE, WHICH WAS ONLY 7.6% AND THIS IS SPREAD THROUGHOUT THE ENTIRE DISTRICT. SO THERE WAS NO PLACE FOR THE LEGISLATURE TO FIND ADDITIONAL AFRICAN-AMERICAN POPULATION TO ADHERE WITHOUT RUNNING OUT A LONG TENTACLE TO BRING IT IN FROM SANFORD OR SOME OTHER AREA OF THE STATE OF FLORIDA WHICH IS UNDER THE SHORTLY HUNT DECISION IS unconstitutional. YOU CANNOT, IN ORDER TO COMPLY WITH THE VOTING RIGHTS ACT IT IS NOT SUFFICIENT TO ENGAGE IN BLATANT RACIAL GERRYMANDERING. STATE COULD NOT DO THAT. BECAUSE OF THE CHANGES IN POPULATION, THE LEGISLATURE HAD NO CHOICE IN THAT DISTRICT BUT TO DO WHAT IT DID. INTERESTINGLY, THE INCUMBENT IN THAT DISTRICT, WHO IS A AFRICAN-AMERICAN AND BY THE WAY, UNITED STATES SUPREME COURT SAID THE SIGNIFICANT ISSUE IS NOT THE RACE OF THE SENATOR, BUT THE RACIAL MAKEUP OF THE CONSTITUENCY BECAUSE THE CONSTITUENCY CAN ELECT ANYBODY THEY WANT TO. AND THE QUESTION IS THEIR HAVING THE ABILITY TO INFLUENCE WHO WAS ELECTED. BUT SENATOR Holsendorf REQUESTED MOST OF THE CHANGES AND APPROVED THE DISTRICT REFLECTS THAT. THE OTHER DISTRICT I WANTED TO MENTION WAS DISTRICT 18, WHICH HAS BEEN CHALLENGED IN THE MARTINEZ BRIEF. DISTRICT 18 AGAIN WAS ONE OF THE LARGEST DEVIATION DISTRICTS THAT THE LEGISLATURE HAD TO DEAL WITH. IT WAS SHORT 63,112 PERSONS. OVER 15%, WHICH IS UNCONSTITUTIONAL. THE LEGISLATURE IN AN EFFORT TO MAINTAIN THE AFRICAN-AMERICAN INFLUENCE OF THIS DISTRICT -- IT WAS NEVER A MAJORITY DISTRICT BUT IT WAS REDUCED BY 3.9% IN VOTING AGE AFRICAN-AMERICAN POPULATION. THEY REMOVED FROM THE DISTRICT AREAS THAT WERE PRIMARILY WHITE REPUBLICAN. FOR INSTANCE, APOLLO BEACH. AND THEY ABSORBED ALL SURROUNDING AREAS WITH CONCENTRATIONS OF AFRICAN-AMERICANS TO THE EXTENT THAT THEY WERE ABLE TO DO SO WITHOUT VIOLATING THE SHAW DECISION. WHAT THEY DID DO IS THEY AVOIDED RUNNING A TENTACLE TO AFRICAN-AMERICAN WHICH WOULD HAVE BEEN AGAIN A DIRECT VIOLATION OF THE UNITED STATES CONSTITUTION AS THE U.S. SUPREME COURT HAS INTERPRETED IT. AND HERE LIKE DISTRICT ONE, ALL OF THE SURROUNDING AREAS THAT HAD A SIGNIFICANT INFLUX OF WHITE VOTERS, SO THE LARGEST CONCENTRATION IN ANY OF THE SURROUNDING DISTRICTS OF AFRICAN-AMERICAN AT THIS TIME IS ONLY 7.6% SPREAD NOT CONTIGUOUS TO DISTRICT 18. SO I MENTION THIS NOT BECAUSE I THINK WE HAVE AN OBLIGATION TO DEFEND IT, BUT BECAUSE OF THE FACT THAT THE LEGISLATURE FACED DIFFICULT CHOICES.

MR. RICHARD, HOW ARE WE TO REVIEW THAT EQUAL PROTECTION SEGMENT OF THOSE CHOICES? THIS COURT HAS ALREADY SAID WE CANNOT UNDERTAKE A FULL SECTION TWO ANALYSIS. AND IT STRIKES ME THAT THE SHAW, THE HUNT RULING IS ALSO ESSENTIALLY A FACT DRIVEN RULING. HOW ARE WE TO REVIEW THAT? ARE WE NOT ABLE TO UNDERTAKE A COMPLETE EQUAL PROTECTION ANALYSIS EITHER?

WELL I HAVE TWO RESPONSES, YOUR HONOR. THE FIRST IS THAT AS THIS COURT RECOGNIZED AND STATUTE DOES, PRESUMPTIVELY VALID. THE BURDEN IS UPON THE PLAINTIFFS TO PROVE IT IS INVALID. AND THE U.S. SUPREME COURT BY THE WAY HAS SAID THAT UNDER EQUAL PROTECTION OR THE VOTING RIGHT ACT, THE BURDEN UPON THE PLAINTIFF IS A HEAVY ONE. TO

SHOW THAT THE ACT IS UNCONSTITUTIONAL. THE ONLY THING THIS COURT CAN DO, AS IT HAS RECOGNIZED, GIVEN THE TIME CONSTRAINTS, IS TO DETERMINE WHETHER THE PLAN AS PRESENTED TO IT IS SO CLEARLY UNEXPLAINABLE ON NON-RACIALLY, UNCONSTITUTIONAL GROUNDS, THAT IT MUST BE STRUCK DOWN. AND I WOULD SUGGEST TO THE COURT THAT THERE IS NOT A SINGLE DISTRICT IN THE SENATE PLAN THAT WOULD SUPPORT THAT KIND OF A CONCLUSION AND THE BEST EVIDENCE OF IT IS THAT NONE OF THE OPPONENTS HAVE BEEN ABLE TO PRESENT THIS COURT WITH ANY EXPLANATION OF WHY THAT'S TRUE. AND THAT IS THE STANDARD, BUT THE UNITED STATES SUPREME COURT SAID UNDER THE EQUAL PROTECTION CLAUSE BY THE WAY THERE IS A SECOND BURDEN. YOU HAVE GOT TO SHOW THAT IT WAS INTENTIONALLY DRAWN IN ORDER TO DISCRIMINATE, WHICH IS FACT SPECIFIC ASKED AND ANSWERED NOTHING THIS COURT CAN CONSIDER HERE. BUT EVEN IF WE LOOK AT THE ITSELF ISSUES UNDER THE VOTING RIGHTS ACT, WHAT THE PLAINTIFFS HAVE GOT TO ESTABLISH FOR THIS COURT ON THE FACE OF THIS PLAN IS THAT WHEN YOU LOOK AT THE PLAN, THERE IS NO EXPLANATION THAT CAN BE REACHED WITHOUT AN EVIDENTIARY HEARING, OTHER THAN THE FACT THAT IT WAS UNCONSTITUTIONALLY GERRYMANDERING. AND NONE OF THE OPPONENTS OF THIS PLAN HAVE PRESENTED THIS COURT WITH ANY SUGGESTION EVEN THAT THAT'S THE CASE. THEY HAVE ESSENTIALLY RAISED SOME QUESTIONS. AND IF THAT'S ALL IT TAKES, THEN WE WILL NEVER HAVE A PLAN THAT CAN BE VALIDATED BY THIS COURT. IF THE ONLY THING AN OPPONENT HAS TO SAY IS WHAT THE OPPONENTS SAID IN THE SUBMISSIONS AND BRIEFS BEFORE THIS COURT, IT WILL BE VIRTUALLY IMPOSSIBLE TO HAVE A PLAN APPROVED BY THIS COURT BECAUSE THERE IS NOTHING THAT SUGGESTS THAT THERE IS NOT ANY VALID REASON -- IN FACT THE RECORD IF ONE GETS INTO IT, THERE WAS A VALID REASON FOR I BELIEVE BOTH THE HOUSE AND SENATE FOR EVERY LINE THEY DREW. I THINK THIS IS PROBABLY THE MOST COMMENDABLE SUBMISSION OF A PLAN THIS COURT HAS HAD SINCE REYNOLDS V SIMS REQUIRED US TO ENGAGE IN THIS PROCESS. THE LAST THING I WANTED TO MENTION, THE COURT HAS NOT RAISED THE QUESTION WITH ME, BUT BECAUSE IT WAS RAISED WITH JUDGE HATCHETT AND IT WAS ADDRESSED AT THE ISSUE OF PARTISAN GERRYMANDERING. YOU KNOW THAT WHILE JUDGE HATCHETT MENTIONED, THE UNITED STATES SUPREME COURT HAS RECOGNIZED THAT IT IS A justiciable ISSUE, THERE HAS NEVER BEEN A CASE IN WHICH COURT FOUND PARTISAN GERRYMANDERING TO HAVE OCCURRED. THE REQUIREMENT IS NOT ONE THAT CAN BE ADDRESSED IN THIS FORUM. THE PLAINTIFFS MUST SHOW BECAUSE OF THE NATURE OF THE PLAN THAT THERE WILL BE A CONSISTENT DEGRADATION OF THE ABILITY OF A POLITICAL GROUP TO SIGNIFICANTLY INFLUENCE ELECTION. NOT EVEN BECOME ELECTED BUT SIGNIFICANTLY INFLUENCE ELECTION. AND ONE OF THE INTERESTING COMMENTS BY THE UNITED STATES SUPREME COURT I THINK, WHICH HAS DIRECT APPLICATION HERE, WAS IN DAVIS V BANDEMER IN 1986, BECAUSE IT DIRECTLY REFLECTS THE SITUATION IN FLORIDA. THE COURT SAID IF ALL OR MOST OF THE DISTRICTS ARE COMPETITIVE EVEN A NARROW STATEWIDE PREFERENCE FOR EITHER PARTY WOULD PRODUCE AN OVERWHELMING MAJORITY IF THE WINNING PARTY IN THE STATE LEGISLATOR. THIS CONSEQUENCE, HOWEVER, IS INHERENT IN WINNER TAKE ALL DISTRICT BASED ELECTIONS. AND WE CANNOT HOLD THAT SUCH A REAPPORTIONMENT LAW WOULD VIOLENT THE EQUAL PROTECTION CLAUSE BECAUSE THE VOTERS IN THE LOSING PARTY DO NOT HAVE REPRESENTATION IN THE LEGISLATURE IN PROPORTION TO THE STATEWIDE VOTE RECEIVED BY THEIR PARTY CANDIDATES. THERE IS NOTHING PRESENTED TO THIS COURT TO SUGGEST IN ANY FASHION THAT THERE IS A CASE HERE FOR PARTISAN GERRYMANDERING. AS A MATTER OF FACT, I THINK THE SENATE DID AN EXTRAORDINARY JOB IN RESPECTING THE BALANCE OF POLITICAL POWER IN THIS STATE. THANK YOU YOUR HONOR.

MR. HANCOCK, ARE YOU GOING TO PROCEED ON BEHALF OF THE ATTORNEY GENERAL?

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MAY IT PLEASE THE COURT, I AM PAUL HANCOCK REPRESENTING ATTORNEY GENERAL BOB BUTTERWORTH AS YOU KNOW IS HERE ALSO THIS MORNING. THE OBLIGATION OF THE FLORIDA LEGISLATURE, AS WELL AS THE OBLIGATION OF THIS COURT, TO ENSURE THAT ANY

REDISTRICTING PLAN THAT COMES OUT OF THIS PROCESS, AS THE SUPREME COURT HAS SAID, IS CONSISTENT, AVOIDS ARBITRARY AND DISPARATE TREATMENT OF MEMBERS OF THE ELECTORATE. THAT IT SATISFIES PRINCIPLES OF FUNDAMENTAL FAIRNESS AND RESPECTS THE DIGNITY OF EACH VOTING. THAT IS THE LEGAL STANDARD THAT NEED TO GUIDE THIS REVIEW. THIS COURT --.

THIS COURT SETS A PRETTY NARROW STANDARD THOUGH. AND THE FIRST REVIEW UNDER THE CONSTITUTION IN 1972, AS TO THE VALIDITY OF A LEGISLATIVE PLAN, AND IN FACT THE COURT SAID THAT THE -- WE EMPHASIZE THE LEGISLATIVE REAPPORTIONMENT IS PRIMARILY A MATTER FOR A LEGISLATIVE CONSIDERATION AND DETERMINATION. JUDICIAL RELIEF BECOMES APPROPRIATE ONLY WHEN A LEGISLATURE FAILS TO REAPPORTION ACCORDING TO FEDERAL AND STATE CONSTITUTIONAL requisites. AND THEN SAID THAT THE STATE CONSTITUTIONAL REQUISITES WERE NO MORE STRINGENT THAN THE UNITED STATES CONSTITUTIONAL.

YEAH. THAT'S EXPRESSLY WHAT THIS COURT SAID IN 1972. THOSE STANDARDS STILL APPLY, DO THEY NOT?

JUSTICE WELLS, SINCE 1972, THE COURT HAS BEEN FACED WITH MORE COMPLEX LEGAL ISSUES EVERY DECADE AND HAS BEEN REQUIRED TO ADDRESS DIFFERENT ISSUES. THE 1972 ISSUE WAS BY TODAY'S STANDARDS PRETTY STRAIGHTFORWARD. IN 1992, THIS COURT HAD TO $OF INTO MUCH MORE COMPLEX ISSUES INCLUDING DRAWING A PLAN TO CORRECT A PROBLEM THAT THE DEPARTMENT OF JUSTICE IDENTIFIED. THAT PLAN EVEN WAS LATER OVERTURNED. MODIFIED BECAUSE OF CHANGES IN THE LAW AFTER THIS COURT ACTED. THERE WERE REMARKABLE CHANGES IN THE LAW RESPECTING REDISTRICTING SINCE THIS COURT LAST VISITED THE ISSUE. YOU ASKED AND JUSTICE SHAW ASKED ABOUT HOW SECTION TWO MIGHT APPLY IN THIS CONTEXT. YES, THERE ARE SOME LEGITIMATE SECTION TWO ISSUES BEING RAISED HERE. I WOULD SUGGEST TO YOU THAT EQUALLY AND PROBABLY EQUALLY DANGEROUS IS THE OPPOSITE OF SECTION TWO. DOES THE PLAN PRESENTED CONTAIN IMPROPER RACIAL GERRYMANDERS? THAT IS AN AREA OF LAW THAT DEVELOPED TREMENDOUSLY IN 1990 SINCE THIS COURT LAST VISITED THE ISSUE. THE ATTORNEY GENERAL STRONGLY BELIEVES THAT FLORIDA'S LEGISLATURE SHOULD REFLECT THE FACE OF FLORIDA. AT THE SAME TIME, WE HAVE TO TAKE INTO ACCOUNT THE DECISIONS THAT THE SUPREME COURT THAT GUIDE THIS REVIEW. AND THEY TELL US THAT --.

WHAT GUIDES THIS REVIEW IS A FACIAL REVIEW OF WHETHER THIS -- WHAT THE LEGISLATURE DID MEETS THE UNITED STATES CONSTITUTION. DOES IT NOT?

YES.

AND AS I UNDERSTAND WHAT THE ATTORNEY GENERAL HAS FILED WITH THIS COURT IS THAT THE ATTORNEY GENERAL DOES NOT TAKE ISSUE THAT IT MEETS THE REQUIREMENTS OF ONE PERSON, ONE VOTE. CORRECT?

YES. ONE PERSON, ONE VOTE, WE DO NOT DISPUTE THAT.

AND THE ATTORNEY GENERAL DID NOT RAISE A FACIAL CHALLENGE AS TO EAT TITLE TWO OR TITLE FIVE OF THE FEDERAL VOTERS RIGHT ACT, CORRECT?

WE HAVE NOT RAISED EITHER SECTION TWO OR SECTION FIVE CHALLENGE, THAT'S CORRECT.

AND THE ONLY THING THAT THE ATTORNEY GENERAL HAS ASKED THIS COURT TO DO IS TO REQUIRE THERE TO BE SOME STANDARDS, CORRECT?

YES. AS JUSTICE ANSTEAD SUGGESTED IN HIS QUESTION, IN ORDER FOR YOU TO DETERMINE THE VALIDITY OF THIS PLAN, UNDER THE LAW AS IT EXISTS TODAY, YOU NEED TO KNOW THE LEGISLATURE'S GAME PLAN. WITH STANDARDS TAKE ON A CONTEXT IS A WORD THAT HAS

BECOME COMPLEX. BUT THERE NEEDS TO BE -- UNTIL YOU KNOW WHY THEY DREW THE LINES THE WAY THEY DREW THE LINES --.

ARE WE TO REVIEW THE REASONS OR ARE WE TO REVIEW THE PRODUCT?

NO, I THINK JUSTICE HARDING, IF YOU KNEW THE GAME PLAN, IF YOU KNEW WHAT THEY WERE TRYING TO DO, THEY SAID WHEN -- CONSISTENTLY AT THE PUBLIC HEARINGS THEY WERE TOLD WE WANT COMPACT districts, WE WANT OUR COMMUNITIES OF INTEREST TO BE RECOGNIZED. PERHAPS COUNTY BOUNDARIES RUB RESPECTED. HERE THIS PLAN IS MANIPULATED EVERY WAY POSSIBLE WITHOUT ANY EXPLANATION. IF YOU LOOK AT THE --.

THE REQUIREMENT FOR THE EXPLANATION.

AGAIN, IN ORDER TO DETERMINE VALIDITY, THE SUPREME COURT HAS SAID, IN FACT THE HOUSE COUNSEL ADVISED THE HOUSE WHEN THEY WERE DEVELOPING THIS PLAN THAT THE LAW HAD CHANGED MARKEDLY SINCE THE LEGISLATURE LAST VISITED THIS ISSUE. AND THE WAY TO HAVE A PLAN UPHELD IS TO HAVE STANDARDS UPON WHICH IT'S DRAWN THAT CAN JUSTIFY THE DECISION-MAKING PROCESS. THEY WERE THEN ASKED, ASKED MR. DEGRANDY, THE HOUSE COUNSEL WHETHER THE PRESENT PLAN WOULD WITH STRAND THAT SCRUTINY. THE RESPONSE WAS IT MAY OR MAY NOT. DEPENDING ON THE REASONS THAT THE LINES WERE DRAWN. WE SAY TO YOU THAT UNTIL YOU KNOW THE REASONS THAT THE LINES WERE DRAWN, IT IS NOT POSSIBLE FOR YOU TO CERTIFY THE VALIDITY --.

BUT AREN'T YOU TALKING ABOUT EXTRA CONSTITUTIONAL REQUIREMENTS? IN OTHER WORDS, I, EVEN READ THE BRIEF THAT YOU ALL SUBMITTED, AS CONCEDING THESE ARE EXTRA CONSTITUTIONAL, THAT THESE MAY BE INDEED GOOD POLICY, FOR INSTANCE, IF YOU HAD A CONSTITUTIONAL AMENDMENT THAT YOU CREATED A COMMISSION TO DO, THE REDISTRICTING, THAT YOU MIGHT HAVE STANDARDS SUCH AS YOU ARE ADVOCATING HERE. BUT THESE ARE NOT CONSTITUTIONALLY BASED STANDARDS, ARE THEY? THERE IS NO REQUIREMENT THAT THE LEGISLATURE ADOPT STANDARDS LIKE THIS IN ORDER TO DO THEIR WORK.

THERE IS NO REQUIREMENT THAT A SPECIFIC STANDARD BE ADOPTED. BUT THERE IS A REQUIREMENT THAT THE PLAN DRAWING NOT BE ARBITRARY. WHICH MEANS THERE NEED TO BE SOME GAME PLAN. THERE NEED TO BE SOME OVERALL REASON THAT THE LINES WERE DRAWN IN THIS WAY. LET ME JUST IF I COULD, I'D LIKE TO JUST DESCRIBE SOME OF THESE DISTRICT TO SHOW YOU WHAT I MEAN ABOUT THE ARBITRARINESS. IN THE INCONSISTENCY THAT WAS APPLIED THROUGHOUT FLORIDA IN DRAWING THIS PLAN. IF WE START, FOR EXAMPLE, WITH DISTRICT 87 IN THE HOUSE IN PALM BEACH, THE HOUSE AFTER THEY DREW THE LINES, TRIED TO SAY WHY THEY DREW THE LINES IN THIS MANNER. IF YOU LOOK AT DISTRICT 87, IT STRETCHES FROM PALM BEACH AND THAT IS WHAT WE HAVE REFERRED TO AS THE GEAR DISTRICT. ALLEGEDLY JUSTIFIED, GERRYMANDERED OR CONTORTED A DISTRICT FOR THE PURPOSE IT SAYS OF PUTTING AFFLUENT PEOPLE IN THE SAME DISTRICT. IN THE SAME COUNTY THEY DREW A DISTRICT THAT stretches ALMOST FROM THE OCEAN BY A VERY NARROW STRETCH OF LAND TO THE FAR WEST PART OF THE SAME COUNTY. IN THAT CASE, THEY SAID THEY DREW THE LINE TO KEEP WORKING CLASS PEOPLE TOGETHER WITH AGRICULTURAL PEOPLE. NOW WHAT THE STANDARD IS THAT FLORIDA SEPARATES PEOPLE ACCORDING TO THEIR WEALTH IN REDISTRICTING, THE LEGISLATURE SHOULD SAY SO. I AM NOT SURE SUCH A STANDARD WOULD SURVIVE THE FLORIDA CONSTITUTION. THAT TO ME WOULD BE WHOLLY ARBITRARY, NOT TO FAIRLY REFLECT NEIGHBORHOODS THAT MIGHT BE OF A CERTAIN INCOME --.

HOW ARE WE IN THE CONFINES OF OUR REVIEW TO MAKE THAT DETERMINATION? ARE WE TO JUST FACIALLY ACCEPT YOUR ASSERTION THAT, THAT IT IS -- IT'S WRONG? DO WE NOT GIVE THE PARTIES THE OPPORTUNITY TO HAVE, TO BE HEARD, AND TO HAVE SOME DECISION MAKER COME UP WITH A ULTIMATE DECISION IN THAT? HOW ARE WE IN THIS CONTEXT ABLE TO MAKE A

DECISION BASED ON YOUR ASSERTION?

WE DON'T BELIEVE THAT ANY EVIDENTIARY HEARING IS REQUIRED. THE RECORD BEFORE THIS COURT SHOWS THESE FACTS. THE LEGISLATURE HAS TAKEN A DECISION OF THIS COURT, WHICH WAS REASONABLE IN ITS CONTEXT, THAT IS CONTIGUITY CAN BE OBTAINED BY WATER, AND STRETCHED THAT TO SUCH AN EXTREME AND ALSO BY ABANDONING ANY RESPONSIBILITY FOR COMPACTNESS, THAT DISTRICTS UNDER THEIR INTERPRETATION OF THE CONSTITUTION CAN BE DRAWN IN ANY MANNER. WE SAY IN OUR BRIEF, FOR EXAMPLE, THAT A DISTRICT COULD BE DRAWN FROM PENSACOLA TO KEY WEST THAT IS GOING BY THE GULF OF MEXICO. THAT IN THE LEGISLATURE'S VIEW IS VALID. WOULD IT BE ARBITRARY? WE SUGGEST THAT IT WOULD. AND THROUGHOUT THIS, THE LEGISLATURE HAS EVEN MANIPULATED EQUAL POPULATION.

DOESN'T THAT EXAMPLE, THOUGH REALLY TEE FEET YOUR ARGUMENT? THAT IS, YOU DON'T SUGGEST THAT THERE IS SUCH AN EXTREME EXAMPLE HERE IN THE DRAWING OF EITHER THIS THE HOUSE OR THE SENATE. AND BY THAT, IT SEEMS TO ME TO SUGGEST THAT ARBITRARINESS IS IN THE EYES OF THE BEHOLDER. THAT IS, WHAT MAY BE ONE FACTOR THAT RENDERS A PARTICULAR PLAN ARBITRARY IN ONE PERSON'S EYE, WOULD NOT RENDER IT ARBITRARY IN ANOTHER PERSON'S EYE. IF YOU JUST TRIED TO TAKE A RULER AND DRAW OUT THE STATE AND YET MEET THIS ONE PERSON, ONE VOTE, WHICH IS THE FUNDAMENTAL REQUIREMENT THAT IS HERE, YOU'RE GOING TO END UP WITH ALL KINDS OF MIXES, ARE YOU NOT? THAT IF YOU FOCUS ON THE KIND OF PEOPLE AND POPULATION, AG OR RETIREMENT, OR WHATEVER, THAT AN ARGUMENT CAN ALWAYS BE MADE THAT IT'S ARBITRARY. BUT BEYOND THESE TWO REQUIREMENTS OF ONE PERSON, ONE VOTE, WHICH IS A FUNDAMENTAL AND INCREDIBLY IMPORTANT REQUIREMENT, AND THE RACIAL OR LANGUAGE ISSUE WITH REFERENCE TO DRAWING THE LINE, WHAT OTHER CONSTITUTIONALLY IMPOSED REQUIREMENTS ARE THERE THAT YOU'RE CLAIMING THAT THE LEGISLATURE DID NOT MEET IN THIS CASE?

I THINK THE LEGISLATURE IS UNDER AN OBLIGATION TO DEFINE ITS GAME PLAN TO AVOID THE CLAIM OF ARBITRARY AND DISPARATE TREATMENT.

WHAT CONSTITUTIONAL MANDATE IS THERE THEY'RE UNDER AN OBLIGATION?

THAT IS THE EQUAL PROTECTION CLAUSE OF THE UNITED STATES CONSTITUTION AND THE FLORIDA CONSTITUTION. THAT IS WHAT THE SUPREME COURT SAID IN BUSH VERSUS GORE. THOSE WERE THE WORDS THEY USED. THE EQUAL PROTECTION CLAUSE DEMANDS NON-ARBITRARY TREATMENT OF VOTERS. VOTING IS A FUNDAMENTAL RIGHT. PEOPLE CAN'T SIMPLY BE MOVED AROUND.

YOU'RE TALKING ABOUT THE DIFFERENCE BETWEEN SOMEBODY HAVING THE RIGHT EXERCISING THE RIGHT TO VOTE AND MAYBE BEING DEPRIVED OF IT. AS OPPOSED TO HERE, YOU'RE NOT CONTENDING ANYBODY IS BEING DEPRIVED OF THE RIGHT TO VOTE.

THE --.

ONLY ABOUT THEIR GROUPINGS TOGETHER AND THE REPRESENTATION. SO THAT'S A FAR DIFFERENT CONSIDERATION, IS IT NOT?

NO, I DON'T THINK SO JUSTICE ANSTEAD. THE SUPREME COURT SAID REPEATEDLY THE RIGHT TO VOTE A AFFECTED BY A DILUTION OF THAT. DILUTION OF THE RIGHT TO VOTE CERTAINLY CAN BE EFFECTUATED BY DRAWING PLANS IN A CERTAIN MATTER.

WHERE IS AN IDENTIFIABLE GROUP THAT HAS THIS CRITICAL INTEREST WHOSE VOTING RIGHT HAS BEEN DILUTED THAT YOU CAN POINT TO IN THIS CASE?

WELL I THINK THE SENATE DISTRICT, AND THE HOUSE DISTRICT THAT STRETCHES FROM

PEMBROKE PINES TO MARCO ISLAND IS ONE SUCH CASE. THE SENATE DISTRICT THAT STRETCHES ACROSS THE STATE IS ANOTHER SUCH CASE.

AND ARE YOU CLAIMING THAT THERE IS RACIAL?

NO I AM NOT.

WHAT -- WHO IS IT THAT IS BEING PUT IN THAT SITUATION?

THIS AFFECTS ALL RESIDENTS OF THE STATE REGARDLESS OF RACE. AND ALL RESIDENTS OF THE STATE ARE ENTITLED TO EQUAL PROTECTION. NOT JUST RACIAL MINORITIES, BUT ALL PEOPLE ARE ENTITLED TO EQUAL PROTECTION. HERE, AND THEY ALSO ARE ENTITLED TO A UNIFORM APPLICATION OF THE, WHATEVER THE BASIS OF THIS PLAN IS. IN SOME INSTANCES, THE LEGISLATURE SAID WE WANT TO RESPECT POSTAL COMMUNITIES. IN OTHER INSTANCES THEY SAID WE WANT TO JOIN COASTAL COMMUNITIES WITH RURAL COMMUNITIES. OTHER INSTANCES THEY SAID WE WANT TO KEEP URBAN UP NEAR GAINESVILLE, IT WAS JUST OUTSIDE GAINESVILLE, DISTRICT IS DESCRIBED AS ONE THAT KEEPS RURAL INTERESTS TOGETHER.

MORE FACT FINDING THAN WE ARE CAPABLE OF DOING IN A REDISTRICTING SITUATION. SO SHOULDN'T THIS BE ADDRESSED AGAIN IN A COURT SYSTEM RATHER THAN HERE?

THE PURPOSE OF THIS COURT'S REVIEW IS TO AVOID THAT JUSTICE SHAW. THAT IS WHY THE FRAMERS OF THIS CONSTITUTION PUT THIS VERY HEAVY BURDEN ON YOU BECAUSE THEY DIDN'T WANT THIS TO GO TO THE COURT. THEY WANTED IT TO BE CAUGHT HERE. THAT IS CLEAR FROM THE CONSTITUTIONAL PROCEEDINGS AND OUR CURRENT CONSTITUTION. THIS COURT RECOGNIZED THAT IN ITS 1982 DECISION WHERE IT TALKED ABOUT THE FRAMERS BEING WELL AWARE OF THE LONG SHAW LITIGATION OR THE ADAMS LITIGATION.

BUT WE GO INTO A THORNBURG VERSUS GINGLES TYPE OF INQUIRY. ARE YOU REQUESTING US TO DO THAT?

NO, I THINK THE CAN BE DECIDED ON THE RECORD. BUT I WOULD SAY TO YOU THAT THE GINGLES DECISION RELIES A LOT ON COMPACTNESS. IF DISTRICTS ARE COMPACT, THEY CAN BE -- THEY CAN BE DEFENDED. IF THEY ARE NOT COMPACT, THEY CAN BE EASILY CHALLENGED. AND EVEN UNDER THE SECTION TWO STANDARD, YOU CAN'T EVEN DRAW A DISTRICT THAT IS NOT COMPACT TO REMEDY A VIOLATION OF FEDERAL LAW. THE SUPREME COURT HAS SAID REPEATEDLY AGAIN SINCE THIS COURT LAST LOOKED AT THE ISSUE, THAT APPEARANCES DO MATTER IN REDISTRICTING. WE SUGGEST YOU START LOOKING BY LOOKING AT THE APPEARANCE OF SOME OF THESE DISTRICTS AND SAY WHY? DOES THIS REFLECT --.

HOW TO SAY WHY, DO WE JUST PULL POSSIBLE REASONS OUT OF THE AIR? I DON'T UNDERSTAND HOW WE CAN BE IN THE POSITION TO AVOID FEDERAL LITIGATION GIVEN THE TIME CONSTRAINTS IMPOSED BY THE FLORIDA CONSTITUTION AND THE LIMITATIONS ON OUR FACT FINDING. IT STRIKES ME THAT, THE CIRCUMSTANCE IS THE OPPOSITE, THAT THE CURRENT SYSTEM GIVES TO THE FEDERAL COURT SYSTEM THE ULTIMATE AUTHORITY TO LOOK AT THE DETAILS OF THE REDISTRICTING PLAN.

I WOULD SAY TWO THINGS, YOUR HONOR. ONE IS THAT OUR CONSTITUTION IS JUST THE OPPOSITE. IT PUTS THAT BURDEN ON THIS COURT. NOT THE FEDERAL COURT. THE WHOLE PURPOSE OF THIS REVIEW WAS BECAUSE THE PEOPLE OF FLORIDA WERE TIRED OF THE FEDERAL COURT REVIEWING THESE PLANS. THEY WANTED THEIR OWN SUPREME COURT TO LOOK AT IT AND TELL THEM WHAT TO DO.

DO THE PEOPLE REJECT A PROPOSAL THAT WOULD HAVE GIVEN A MORE DETAILED REVIEW CRITERIA AND PROCEDURE TO THIS COURT?

THE PEOPLE REJECTED A PROPOSED CONSTITUTIONAL AMENDMENT THAT WOULD HAVE TAKEN THIS OUT OF THE HAND OF THE LEGISLATURE AND YES TACKED ON SOME THINGS TO IT. BUT THAT REJECTION, IF ANYTHING TODAY, THE LEGISLATURE WHEN THEY WENT AROUND THE STATE AND PUBLIC HEARINGS, THE TWO THINGS THEY HEARD THE MOST IS WE WANT COMPACT DISTRICTS AND WE WANT OUR COMMUNITY OF INTEREST TO BE PROTECTED. I SUGGEST, WE SUGGEST THAT THIS CAN BE ADDRESSED EASILY BY SENDING IT BACK TO THE LEGISLATURE TO DESCRIBE THEIR GAME PLAN. THE PLAN CAN THEN COME BACK TO YOU, YOU CAN LOOK AT IT TO SEE WHETHER IT CONFORMS WITH THAT. DOES IT CARRY OUT THAT GAME PLAN? IS IT UNIFORM? IS IT FAIR TO THE PEOPLE OF FLORIDA? IF IT IS, THEN UNUSUALLY SHAPED DISTRICTS MAY BE JUSTIFIED. ON THE OTHER HAND THEY MAY DECIDE SOME OF THESE DISTRICTS NEED TO BE MODIFIED IN ORDER TO MEET THE STANDARD THAT THEY THEMSELVES -- WE'RE NOT SUGGESTING YOU DESCRIBED THE STANDARDS, WE HAVEN'T DESCRIBED THE STANDARDS. THEY CERTAINLY ARE RAMPANT IN THE SUPREME COURT HAS SAID TO THEM OVER AND OVER AGAIN --.

THAT OURS IS A FACIAL REVIEW RATHER THAN AS APPLIED.

FACIAL ON THE RECORD BEFORE THE COURT. WE ARE NOT SUGGESTING THAT THERE IS ANY NEED FOR ANY EVIDENTIARY HEARING ON THIS. THE PLANS THEMSELVES, WITH ALL THE TECHNOLOGY THAT IS AVAILABLE TODAY, YOU HAVE A RECORD NOW BEFORE YOU THAT SHOWS WHAT WE'RE SAYING. THAT IS, THAT NO STANDARDS WERE USED TO THE EXTENT THAT THEY, WHEN THEY DREW THE LINES, THEY EMPLOYED DIFFERENT CONSIDERATIONS THROUGHOUT THE STATE. IF YOU LOOK AT DISTRICT, WE TALKED SOME ABOUT POLITICAL GERRYMANDERING. IF YOU LOOK AT THAT DISTRICT 87 AND 86 IN THE PALM BEACH AREA, THE FREDS SYSTEM WHICH YOU HAVE ALLOWS YOU TO PRESS A BUTTON AND LOOK AT THE VOTES FOR GORE AND BUSH IN THAT DISTRICT. IT PERFECTLY COINCIDES BLOCK BY BLOCK AS THAT DISTRICT WEAVES AROUND THROUGH NEIGHBORHOODS TO PICK UP PEOPLE WHO VOTED FOR GEORGE BUSH AND PUT IN ONE DISTRICT AND PEOPLE WHO VOTED FOR AL GORE INTO ANOTHER DISTRICT.

BUT AREN'T YOU GETTING INTO AN AS APPLIED CONSIDERATION THIS?

NO, I THINK THAT FACIALLY, IT SHOWS THAT THERE IS NO STANDARDS IN DRAWING THESE LINES. THERE IS NOT A BASIS BY WHICH YOU'RE IN A VERY DIFFICULT POSITION OF SAYING THIS PLAN IS VALID. WE SUGGEST TO YOU THAT UNLESS YOU KNOW THE BASIS FOR DRAWING THE PLAN, YOU'RE NOT JUST HERE TO PUT A RUBBER STAMP ON THIS. THIS DOESN'T COME WITH THE PRESUMPTION OF THE VALIDITY THAT A STATUTE DOES. IT IS NOT A STATUTE. IT IS A JOINT RESOLUTION.

BUT IT DID NOT COME WITH A PRESUMPTION OF VALIDITY?

IT DOESN'T COME WITH A PRESUMPTION OF VALIDITY THAT THE STATUTE DOES. THIS IS NOT A STATUTE. YOU ARE IN THE ROLE THAT THE GOVERNOR OTHERWISE WOULD BE IN. IT IS A BILL THAT A JOINT RESOLUTION BY THE legislature THAT COMES TO YOU RATHER THAN THE GOVERNOR. YOU ARE SOMEWHAT LIKE DISTRICT COURT IN THE DISTRICT OF COLUMBIA UNDER SECTION FIVE OF THE VOTING RIGHTS ACT, WHERE YOU MUST, THAT COURT MUST FIND THAT THE RECORD SHOWS THAT THE PLAN IS FREE OF DISCRIMINATION. HERE THE JOINT RESOLUTION COMES TO YOU, SOMEBODY NEEDS TO BE ABLE TO GIVE YOU A RECORD THAT SHOWS THAT IT IS VALID. WITHOUT THAT RECORD, WE SUGGEST THAT IT SHOULD GO BACK TO THE LEGISLATURE TO TELL YOU WHY THEY DREW THE LINES THE WAY THEY DID. THEN IF THEY NEED TO MODIFY IT TO EFFECTUATE THE GAME PLAN THAT THEY THINK IS APPROPRIATE FOR DIVIDING PEOPLE IN FLORIDA, THEN IT CAN COME BACK TO YOU AND THERE CERTAINLY WOULD BE THEN CERTAIN PRESUMPTIONS. IF THE LEGISLATURE DECIDED TO GO EAST RATHER THAN WEST IN DRAWING A CERTAIN DISTRICT, WE DON'T THINK YOU SHOULD TOUCH THAT. ON THE OTHER HAND WHEN THEY GO ACROSS THE STATE AND SEPARATE FROM IT THE LAKE WHERE THERE IS HUNDREDS, AT LEAST A HUNDRED MILES WITH NOBODY IN BETWEEN IT AND SAY SOMEHOW THESE

COMMUNITIES HAVE SOMETHING IN COMMON, THAT BORDERS ON, IT DOESN'T REACH ARBITRARINESS. WE ARE NOT TALKING ABOUT JUST ONE DISTRICT IN THE STATE OF FLORIDA. THIS IS CONSISTENT FROM THE PANHANDLE DOWN TO SOUTH MIAMI. WHERE THEIR DECISION-MAKING, LOOK AT THE GAINESVILLE AREA, AGAIN AROUND GAINESVILLE THIS WERE DECISIONS MADE WHEN THEY DESCRIBED THE PLAN THAT RESPECTS KEEP RURAL RESIDENTS IN THE SAME DISTRICTS. WHEN THEY APPROACH GAINESVILLE, THEY DIVIDE GAINESVILLE IN MANY PARTS IN DESCRIBING IT, IT SAYS THE PLAN --.

I THINK YOUR TIME IS UP. THANK YOU VERY MUCH. COURT WILL TAKE 15 MINUTE RECESS.

PLEASE RISE.

MR. DOUGLASS.

MAY IT PLEASE THE COURT I'M DEXTER DOUGLASS FROM TALLAHASSEE. I REPRESENT THE COMMON CAUSE AND THE LEAGUE OF WOMEN VOTERS. THESE ARE NON-PARTISAN GROUPS. THEY DO NOT HAVE A PARTISAN POSITION IN THIS MATTER. AND THEY'RE HERE UPON THE PROPOSITION THAT ALL THEY WANT FOR THE PEOPLE OF FLORIDA IS A FAIR OPPORTUNITY TO ELECT THEIR LEGISLATURE TO REFLECT THE VOTERS OF THE STATE OF FLORIDA. IT IS OUR BASIC POSITION, YOUR HONORS, THAT THE LEGISLATURE'S FAILURE HERE TO IDENTIFY CLEAR STANDARDS, WHICH HAS ALREADY BEEN DISCUSSED FOR REAPPORTIONMENT, VIOLATES THE CONSTITUTIONS OF FLORIDA AND THE UNITED STATES. THE FAILURE TO DO THIS IS NOW ILLUMINATED BY WHAT HAPPENED IN BUSH V GORE. IN BUSH V GORE THIS COURT WAS TOLD THAT HAD THIS COURT ANNOUNCED A STANDARD FOR COUNTING THE BALLOTS, THAT WOULD HAVE BEEN PERMISSIBLE. BUT WITHOUT THE STANDARD, IT WAS VIOLATION OF EQUAL PROTECTION CLAUSE. AND THEREFORE, THAT'S THE RESULT OF THAT CASE. IF ANYTHING HAS HAPPENED IN REAPPORTIONMENT, IT IS A DEVELOPING AREA OF THE LAW. IT ONLY GETS TO DEVELOP EVERY 10 YEARS. AND THAT IS THE REASON THAT IT DEVELOPS. IN THIS CASE, THE ONE POINT THAT WE WANT TO START WITH IS THIS CASE IS HERE UNDER THE CONSTITUTION, WHICH REQUIRES THE ATTORNEY GENERAL TO BRING AN ACTION, WHICH HE DID. IT THEN LODGES IT IN THIS COURT, WHO HAS JURISDICTION OF THE DECLARATORY JUDGMENT THAT'S REQUIRED. AND THE COURT IS THEN ASKED TO DETERMINE THE VALIDITY OF THE PLAN. AND IN DOING THAT, THE COURT IS NOT UNDER ANY PRESUMPTIONS. WE'RE HERE ON A CONSTITUTIONAL BASIS, WHICH CREATES FOR THE COURT STANDARD OF SCRUTINY TO DETERMINE IF IT DOES IN FACT COMPLY WITH THE CONSTITUTION. I THINK ALSO MY CLIENTS BELIEVE THAT THIS PLAN THAT HAS BEEN DRAWN, AND IT WILL BE STATED BY OTHERS IN MORE SPECIFICS, HAS DISTRICTS IN WHICH GROUPS WITHIN THOSE DISTRICTS ARE DEPRIVED OF A FAIR VOTE. AND I THINK THE LAW HAS DEVELOPED AND YOU'LL HEAR FROM I BELIEVE MR. CHIMES ON THIS ISSUE, IT HAS DEVELOPED TO THE POINT WHERE YOU DRIVE GROUPS OF THE DISTRICTS OF THE RIGHT TO HAVE THEIR VOTE BE COUNTED, YOU WILL VIOLATED THE SAME PRINCIPLES AND THE ONE PERSON, ONE VOTE.

MR. DOUGLASS, BEYOND THE CONSTITUTIONAL REQUIREMENTS, GRANTED THERE HAS BEEN LIMITED CASE LAW BECAUSE OF IT OCCURRING AFTER EVERY CENSUS, BUT YET REALLY NOW THERE IS AN EXTENSIVE VOLUME OF CASE LAW, THAT CASE LAW IS BASED ON THESE CONSTITUTIONAL STANDARDS, ONE PERSON, ONE VOTE. TISSUE OF RACIAL DISPARITIES, THERE REALLY IS NO CASE LAW OUT THERE THAT SAYS THERE IS A CONSTITUTIONAL SOURCE FOR MANY OF THESE STANDARDS THAT HAVE BEEN TALKED ABOUT TODAY AND ADVOCATED BY THE ATTORNEY GENERAL. REALLY THE ATTORNEY GENERAL IN HIS BRIEF HAS candidly CONCEDED THAT THESE REALLY ARE NOT CONSTITUTIONAL BASED. SO DON'T WE END UP WITH TO A GREAT EXTENT JUST A CLAIM THAT THESE DISTRICTS WERE DECIDED ON POLITICAL CONSIDERATIONS? BUT ISN'T THAT SIMPLY THE WAY THAT THIS IS DONE? THAT THERE HAVE BEEN POLITICAL CONSIDERATIONS, BUT THAT THOSE CONSIDERATIONS ARE CONSTITUTIONALLY ALL RIGHT? IF THAT IS --.

IF THAT'S THE RESULT, YOUR HONOR, THEN MY CLIENTS ARE SORELY DISAPPOINTED BECAUSE IF THAT IS THE RESULT, THERE IS NO POINT IN US BEING HERE AT ALL, IN ANY CASE, UNLESS WE HAVE A FEDERAL CLAIM THAT IS CLEAR UNDER A FEDERAL STATUTE. WE FEEL THAT THE RIGHTS OF THE PEOPLE OF FLORIDA ARE PROTECTED BY THE CONSTITUTION, PARTICULARLY THE DECLARATION OF RIGHTS, SECTION ONE, WHICH SAYS ALL POWER OF THE GOVERNMENT IN FLORIDA VESTS IN THE PEOPLE. IF YOU ALLOW A POLITICALLY CRAFTED OR ANY OTHER KIND OF CRAFTED PLAN, WHICH FAVORS ONE GROUP TREMENDOUSLY OVER ANOTHER GROUP, OR EVEN TO A GREAT EXTENT IN CERTAIN AREAS, THAT RAISES THE CONSTITUTIONAL QUESTION.

BUT HAVEN'T THERE BEEN STANDARDS SET FOR MAKING THAT DETERMINATION? AND AREN'T THOSE STANDARDS VERY, VERY HIGH? AND THIS SITUATION DOES NOT MEET THAT THRESHOLD OF SAYING THAT THE PLAN IS INEFFECTIVE.

CERTAINLY I DON'T WANT TO ARGUE WITH THE COURT. BUT I THINK THAT THE COURT HAS TO DETERMINE THOSE STANDARDS AND THE LAW DEVELOPS. IT IS DEVELOPED IN THE PAST.

BUT HAVEN'T THOSE STANDARDS BEEN SET OUT IN CASES BY THE SUPREME COURT OF THE UNITED STATES?

PRIOR TO THE TIME WE LOST OUR FIRST REAPPORTIONMENT THEY HAVE BEEN SET OUT BY THE SUPREME COURT OF THE UNITED STATES. EACH TIME THIS COMES UP, THERE IS AN EXPANSION OR A DEFINITION OR A CLARIFICATION. WE ARE ASKING FOR A CLARIFICATION BY THIS COURT TO TELL --.

WHAT IS THE STANDARD NOW TO DETERMINE IF SOMEONE HAS BEEN SHUT OUT IN EFFECT?

THE STANDARD NOW, AFTER BUSH V GORE, I THINK, IS PRETTY CLEAR. IF YOU HAVE A SITUATION WHERE THE COURT COULD DEFINE A STAND AND THEY DON'T AND IT RESULTS IN SOME DAMAGE TO SOMEBODY, THAT VIOLATES THE EQUAL PROTECTION CLAUSE. WE THINK IT ALSO VIOLATES SECTION ONE, ARTICLE ONE OF THE FLORIDA CONSTITUTION. AND ALSO AS DUE PROCESS IMPLICATIONS. BUT IF WE ARE GOING TO JUST RUBBER STAMP THESE AS POLITICALLY, THAT'S THE WAY WE DO IT, THEN MAYBE THE CONSTITUTION SHOULD NOT HAVE HAD US COME TO THE COURT AND TEST THE VALIDITY OF IT. MY CLIENTS BELIEVE THIS IS THE ONLY PLACE.

THAT POINT HAS BEEN MADE, OTHER PEOPLE AT OTHER TIMES AS WELL, HAS IT NOT?

THAT MAY BE TRUE. I SEE MY TIME IS RUNNING OUT. BUT I DO WANT TO CLOSE BY SAYING THAT MY CLIENTS FEEL THAT WITH THE DEVELOPMENT OF ALL THE TECHNOLOGY THAT GOES INTO THIS, THE CHANGES THAT HAVE OCCURRED, THAT IT'S IMPERATIVE THAT THIS COURT SEND THIS BACK AND TELL THE LEGISLATURE TO DEFINE THE STANDARDS AND TO SET FORTH THE REASONS THEY CAME UP WITH THIS PLAN, WHICH ANY PERSON LOOKING AT CAN SEE IS GERRYMANDERED BEYOND BELIEF. AND THE PUBLIC KNOWS THAT. THE PRESS KNOWS THAT. AND I THINK WE ALL NO KNOW THAT. AND I DON'T THINK THE COURT NEEDS EVIDENCE TO RECOGNIZE THAT. AND WE ASK -- MY CLIENT, IN THE INTEREST OF THE VOTERS SOLELY, ALL VOTERS, ASK THIS COURT TO EXERCISE ITS POWERS TO SEND IT BACK AND LET'S FIND OUT WHY THEY DID IT. THANK YOU.

THANK YOU MR. DOUGLASS. MR. RYAN.

MAY IT PLEASE THE COURT, I AM REPRESENTATIVE TIM RYAN OF DANIA BEACH IN BROWARD COUNTY. MY PETITION IS FILED ON BEHALF OF MYSELF ALONE, ALTHOUGH I THINK IT EXPRESSES THE SENTIMENT OF A NUMBER OF REPRESENTATIVES THAT SPOKE AGAINST THIS PLAN IN COMMITTEE AND ON THE FLOOR AND THOSE THAT VOTED AGAINST THE PLAN. THE OBJECTION TO THE PLAN IS IT IS INVALID IN THAT IT DILUTES MINORITY VOTING STRENGTH IN A NUMBER OF DISTRICTS THROUGHOUT THE STATE THE QUESTION WAS POSED AS TO WHAT WAS THE GAME PLAN OF THE LEGISLATURE? I THINK IT IS EVIDENT FROM THE RESULT THAT THE GAME PLAN WAS

TO MAXIMIZE THE NUMBER OF SEATS THAT WOULD HAVE PERFORMANCE FOR THE POLITICAL PARTY IN POWER. AND BY DOING THAT, YOU HAD TO ABANDON CERTAIN TRADITIONAL REDISTRICTING PRINCIPLES. AND THE BASELINE PRINCIPLE IS EQUAL PROTECTION. EQUAL PROTECTION UNDER THE STATE CONSTITUTION AND ARTICLE ONE, SECTION ONE, WHICH SPEAKS TO ALL POLITICAL RIGHTS ARE INHERENT IN THE PEOPLE. AND BY THIS PLAN, WE LISTEN TO TESTIMONY OF THE PUBLIC AT HEARINGS THROUGHOUT THE STATE, AND BOTH DEMOCRATIC AND REPUBLICAN SPEAKER WERE CONSISTENT IN SAYING THEY BELIEVE THE DISTRICT SHOULD BE COMPACT. THEY WANTED TO HAVE THEIR COMMUNITY OF INTEREST PRESERVED BECAUSE IT IS SO IMPORTANT WITH REGARD TO OVER CROWDED SCHOOLS, CONTAMINATED GROUNDWATER, WITH REGARD TO ACCESS, TO AFFORDABLE HEALTH CARE, TO PRIMARY CARE, TO TRAFFIC GRID LOCK. TO SO MANY ISSUES THAT WERE OF IMPORTANCE AND SO IF THE PEOPLE WERE TOGETHER IN A COMMUNITY OF INTERESTS, THEN THEY KNEW THAT THEIR REPRESENTATIVE WOULD BE RESPONSIVE TO THEIR NEEDS. BUT THIS WAS NOT FOLLOWED IN THE GAME PLAN. AND WHAT WE ENDED UP DOING, AS IS INDICATED IN MY COMMENTS, IS WE HAVE GONE AHEAD WITH THIS PLAN AND WE HAVE MADE RACE THE PREDOMINANT FACTOR IN DRAWING MANY OF THE DISTRICT LINES. YOU WILL SEE IN YOUR ANALYSIS, WHEN YOU LOOK AT THE PERFORMANCE NUMBERS THAT ARE AVAILABLE ON THE FREDS SYSTEM, YOU WILL FIND THAT WHERE THERE IS A REDUCTION IN THE MINORITY REPRESENTATION IN A DISTRICT, IT CORRELATES WITH PERFORMANCE NUMBERS THAT HAVE THE PARTY IN POWER WITH ONE TO FIVE PERCENT HIGHER IN THOSE PERFORMANCE NUMBERS. NOT NECESSARILY REGISTRATION, BUT HOW THEY PERFORM. AND SO YOU HAVE MOVED AROUND MINORITIES SO THAT YOU CAN MAXIMIZE THE POLITICAL GAIN OF A CERTAIN PARTY. AND IF THERE IS ANYTHING THAT HAS OCCURRED THAT WE WOULD READ FROM, I THINK THE DECISIONS OF THIS COURT, IS THAT EQUAL PROTECTION MEANS THAT ALL PEOPLE SIMILARLY SITUATED SHOULD BE TREATED EQUALLY.

YOUR ATTACK IS KIND OF THE REVERSE OF A ATTACK UNDER SHAW VERSUS RENO. YOUR ATTACK IS MORE UNDER THE LATEST PRONOUNCEMENT, THE U.S. SUPREME COURT IN THE EASLEY VERSUS HUNT, THAT RACE CANNOT BE USED AT ALL. IS THAT YOUR -- IS THAT THE BASIS OF YOUR ATTACK?

WELL, RACE CAN BE USED. RACE IS A FACTOR TO BE USED, ALONG WITH A NUMBER OF OTHER CONSIDERATIONS. AND THOSE ARE THE TRADITIONAL REDISTRICTING FACTORS. BUT YET RACE --.

IT CANNOT BE THE PREDOMINANT FACTOR?

IT CANNOT BE THE PREDOMINANT FACTOR.

BUT YOU HAVE GOT THEN POLITICAL -- IT CAN BE A POLITICAL DECISION MADE IN THE LEGISLATIVE BRANCH OF GOVERNMENT, AS LONG AS RACE IS NOT THE PREDOMINANT FACTOR, CAN IT NOT? ISN'T THAT WHAT EASLEY SAYS?

YES IT CAN. BUT I SUBMIT TO YOU JUSTICES THAT RACE WAS THE PREDOMINANT FACTOR IN A NUMBER OF THE DISTRICTS THAT WERE DRAWN, BECAUSE WHEN YOU LOOK AT THE CONFIGURATION OF THE DISTRICTS, YOU SEE THAT THE DISTRICTS MOVE IN ACCORDANCE WITH, WHERE THERE ARE MINORITY CONCENTRATIONS. IN THE DISTRICTS THAT ARE OUTLINED IN THE COMMENTS, YOU WILL FIND THAT THE MOVEMENT CORRESPONDS WITH MINORITY POPULATIONS, EITHER THOSE THAT ARE TO BE PACKED IN ONE DISTRICT OR THOSE THAT ARE TO BE REMOVED IN OTHERS. AND WE HAVE SOME EXAMPLES. IF YOU LOOK AT DISTRICT 11, YOU SEE --.

NEVER REACHED ANY TYPE OF A DISTRICT WHERE IN A STATE HOUSE SEAT YOU HAVE TO GO 150 MILES FROM LAKE CITY TO SEE YOUR REPRESENTATIVE OVER IN CARAVEL. WHEN YOU LOOK AT DISTRICT 22, THE TRADITIONAL REDISTRICTING PRINCIPLE OF PRESERVING THE CORE DISTRICT. THE CORE DISTRICT IS IN ALACHUA COUNTY AND THAT HAS BEEN RIPPED APART. DISTRICT 101 WITH PEOPLE IN COLLIER COUNTY AND FOLKS IN BROWARD COUNTY WERE UNANIMOUS THAT

NOBODY WANTED TO SEE A DISTRICT REACH ACROSS THE EVERGLADES. THAT WAS DONE. THANK YOU.

MR. ADAMS. -- MR. GRIMES.

MY NAME IS STEPHEN GRIMES REPRESENTING MARION COUNTY AND THE CITY OF OCALA. IN DAVIS V BANDEMER, RECENT U.S. SUPREME COURT HELD THAT IN THE REVIEW OF REAPPORTIONMENT PLANS, POLITICAL GERRYMANDERING IS A justiciable ISSUE SUBJECT TO CLAIMS OF VIOLATION OF EQUAL PROTECTION. THE COURT SAID AN UNCONSTITUTIONAL DISCRIMINATION OCCURS WHEN THE ELECTORAL SYSTEM IS ARRANGED IN A MANNER AND I QUOTE, WHICH WILL CONSISTENTLY DEGRADE A VOTER OR GROUP OF VOTERS INFLUENCE IN THE POLITICAL PROCESS AS A WHOLE. IN OTHER WORDS, THEY WENT BEYOND ONE MAN, ONE VOTE AND THEY SAID THAT THE ISSUE WAS REPRESENTATION. THE ABILITY TO INFLUENCE THE VOTE TO ELECT SOMEONE OF YOUR CHOICE.

HAVEN'T THEY SET OUT EXTRAORDINARILY RESTRICTED TEST TO BE MET THERE? GRANTED THAT VIRTUALLY EVERYBODY FROM THE OUTSET CONCEDES THERE ARE GOING TO BE POLITICAL CONSIDERATIONS INVOLVED WITH THE MAJORITY PARTY. AND NOBODY DISPUTES THAT, WHETHER IT IS IN CALIFORNIA WITH THE DEMOCRATS OR IN FLORIDA WITH THE REPUBLICANS, YOU KNOW -- BUT THEY HAVE SET OUT AN EXTRAORDINARILY STRICT TEST THAT REQUIRES YOU TO SHOW THAT VIRTUALLY NO VOICE CAN BE HEARD OF THE VOTERS. IS THAT NOT TRUE?

IN THE BANDEMER CASE, YOU WILL EXAM IT CLOSELY, THEY AGREED THAT IN MOST INSTANCES, THERE WOULD BE POLITICAL MOTIVATION BEHIND THE DRAWING OF THE LINES. BUT THE REASON THAT THE COMPLAINING PARTY IN BANDEMER LOST WAS BECAUSE THEY COULDN'T SHOW THEY HAD A HISTORY OF NOT BEING ABLE TO INFLUENCE THE VOTE. AND MARION COUNTY HAS THAT HISTORY. FOR 20 YEARS, THEY HAVE BEEN DIVIDED UP INTO A MYRIAD OF DISTRICTS IN WHICH THEY HAVEN'T HAD THE VOTING ANYWHERE NEAR A MAJORITY VOTE, AND THIS PARTICULAR PLAN DIVIDES MARION COUNTY INTO FOUR DISTRICTS IN WHICH THE MOST MAJORITY THEY HAVE IS 27%. OF THE MAJORITY IN ANY ONE OF THEIR DISTRICTS.

THE BANDEMER DECISION, THAT'S A PLURALITY DECISION, NOT A U.S. SUPREME COURT, CORRECT?

I DON'T BELIEVE IT IS, YOUR HONOR. IN THE PRINCIPLE THAT I'M ANNOUNCING.

WELL THE LATEST PRONOUNCEMENT OUT OF THE U.S. SUPREME COURT IS OF COURSE THAT NORTH CAROLINA, THE EASLEY CASE, IN WHICH THEY'RE TALKING IN TERMS -- THAT'S A QUESTION OF WHETHER THERE CAN BE A PREDOMINANTLY RACIAL FACTOR. BUT U.S. SUPREME COURT CERTAINLY IN THAT CASE INDICATED THAT THIS MATTER OF REDISTRICTING IS A POLITICAL MATTER. IT IS A POLITICAL ISSUE, WHICH POLITICAL CONSIDERATIONS HAVE TO COME INTO PLAY. ISN'T THAT REALLY?

THERE IS NO QUESTION OF THAT. IT IS A MATTER OF DEGREE. BUT THEY HAVE RECOGNIZED THAT THE SAME TIME THAT THE POLITICAL GERRYMANDERING IN, WITH REGARD TO A CLAIM AGAINST EQUAL PROTECTION IS A justiciable ISSUE THE COURTS WILL LOOK AT.

HASN'T THAT COURT BEEN CONFRONTED EACH TIME SINCE 1970, REALLY SINCE THE 1968 CONSTITUTION REVISION, WITH CLAIMS OF MUNICIPALITIES OR COUNTIES THAT ARE MAKING CLAIMS THAT THE LEGISLATURE SHOULD HAVE DONE, DRAWN THESE PLANS DIFFERENTLY. AND THIS COURT HAS NEVER HELD THAT A PLAN TO BE INVALID ON THAT BASIS.

WELL, OF COURSE EACH PLAN RISES OR FALL ON ITS FACE. BUT I SUBMIT THAT THE LAW, PARTICULARLY IN THE UNITED STATES SUPREME COURT, EVOLVED GREATLY SINCE WE STARTED DOING THIS BACK IN THE 60'S. AND I SUBMIT THAT THIS PARTICULAR PLAN, AS IT RELATES -- OF COURSE MY INTEREST IS PRIMARILY MARION COUNTY. BUT AS IT RELATES TO SOME OF THE

OTHER AREAS, YOU LOOK AT SOME OF THESE DISTRICTS AND IT'S CLEAR THAT THE, THERE APPEARS TO BE NO STANDARD BY WHICH THEY FOLLOWED AT ALL. SOMEONE, MR. RICHARD SAID HE ANALOGIZED THIS TO A STATUTE. WHEN, AS WE KNOW, WHEN A STATUTE IS CHALLENGED ON GROUNDS OF EQUAL PROTECTION THAT A FUNDAMENTAL RIGHT IS BEING DEPRIVED, THE STANDARD IS THAT STRICT SCRUTINY TO SEE WHETHER OR NOT THIS HAS HAPPENED. YOUR STANDARD OF REVIEW HERE IS DE NOVO BASED ON THE FACE OF WHAT YOU HAVE IN THE RECORD AND IT ISN'T JUST A PROPOSITION THAT WELL IT'S ALWAYS POLITICAL. AND THEREFORE WE HAVE TO AFFIRM IT. YOU HAVE TO LOOK AND SEE WHETHER OR NOT THERE IS A VIOLATION OF EQUAL PROTECTION.

IN 1992, THIS COURT SPECIFICALLY SAID OUR JOB IS NOT TO SELECT THE BEST PLAN. THAT'S TRUE. OUR JOB, BUT RATHER TO DECIDE WHETHER ONE ADOPTED BY THE LEGISLATURE IS VALID. AND SO LIKE OTHER MATTERS COMING TO THIS COURT FROM THE LEGISLATURE, DON'T WE HAVE TO GIVE DEFERENCE TO WHAT THE LEGISLATURE'S DECISION HAS BEEN, WHICH IS NECESSARILY GOING TO BE A POLITICAL DECISION?

UP TO A POINT. BUT WE SUBMIT THAT THIS PLAN GOES BEYOND ANY REASONABLE BASIS THAT THE INDIVIDUAL GROUPS HAVE BEEN DEPRIVED OF THEIR RIGHT TO INFLUENCE THE VOTE. IF YOU ACCEPT THE PROPOSITION THAT YOU OUTLINE, ANY, ANY PLAN, IF IT DIDN'T HAVE A RACIAL PROBLEM IN IT OR IF IT DIDN'T HAVE A ONE MAN ONE VOTE PROBLEM IN IT, WOULD BE VALID AND THERE IS NOTHING MORE YOU CAN DO. AND I SUBMIT THAT THE JOB OF THE COURT IS MORE THAN THAT. AND THAT THE PEOPLE THAT ARE CONSTITUTIONAL FRAMERS INTENDED THIS COURT TO ANALYZE THE PLANS TO SEE IF THEY MEET AT LEAST MINIMUM STANDARDS. AND I SUBMIT BY LOOKING AT THE PLAN HERE AND LOOKING AT THE EXPLANATIONS THAT ARE GIVEN FOR THIS PLAN, IT SIMPLY WOULD NOT MEET THE EQUAL PROTECTION STANDARD. IN THE CASE, WINDING UP IN THE CASE OF MARION COUNTY, THERE WERE STATEMENTS IN THE RECORD AND YOU CAN SEE THEM, WHERE WE WERE TRYING TO PROTECT THE CORE VOTERS. WE WERE TRYING TO PROTECT THE INCUMBENTS. THEY DID THAT, OF COURSE WITH MARION COUNTIES, 20 YEARS WE HAVEN'T HAD A RESIDENT SENATOR. AND WE ARE NOT GOING TO HAVE ONE NOW BECAUSE THEY, THE RESIDENTS ARE PROTECTED CORE VOTERS.

THAT SOME DEGREE UNDERMINE YOUR POSITION BECAUSE YOU'RE SAYING THIS LEGISLATURE DIDN'T REALLY CAUSE THIS PROBLEM. BUT THIS LEGISLATURE IS JUST FOLLOWING WHAT WAS DONE -- IF THIS IS A REPUBLICAN LEGISLATURE, IT IS FOLLOWING WHAT A DEMOCRATIC LEGISLATURE DID BEFORE TO MARION COUNTY, WHICH UNDERCUTS REALLY ANY ARGUMENTS THIS WAS DONE ON A PARTISAN BASIS.

WE HAVE AN APOLITICAL POSITION. OUR -- WE ARE HALF REPUBLICAN, HALF DEMOCRAT IN MARION COUNTY.

WELL I THOUGHT YOUR POSITION WAS THAT YOU WERE OBJECTING THAT THIS WAS DONE ON A PARTISAN POLITICAL GERRYMANDERING ISSUE, THAT IS REALLY WHAT WAS AT WORK HERE AN DIVIDING UP MARION COUNTY.

NO, SIR, IT WAS SIMPLY IGNORING LEGITIMATE INTERESTS OF THE RESIDENTS OF MARION COUNTY TO SOMEHOW, SOME WAY HAVE AN OPPORTUNITY FOR A MEANINGFUL CHANCE UNDER THE LAW OF THE UNITED STATES TO ELECT A REPRESENTATIVE OF THEIR CHOICE. THANK YOU.

THANK YOU MR. GRIMES. MR. GOREN.

MR. STEWART. I'M SORRY.

MAY IT PLEASE THE COURT.

I DID NOT INTEND TO OMIT YOU MR. STEWART.

NO OFFENSE TAKEN, JUDGE. MAY IT PLEASE THE COURT MY NAME IS GREG STEWART OF THE LAW FIRM OF NABORS, GIBLIN AND NICKERSON.

I AM HERE ON BEHALF OF THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY. LEE COUNTY OPPOSES DISTRICT 21 AND DISTRICT 27. DISTRICT 27, WE CONTEND FIRST OF ALL VIOLATES THE CONTIGUITY REQUIREMENT OF THE FLORIDA CONSTITUTION. THAT IS THE DISTRICT REFERRED BY JUSTICE LEWIS, JUSTICE ANSTEAD IN THEIR QUESTIONS EARLIER THAT EXTENDS FROM PALM BEACH TO LEE COUNTY. AS FAR AS DISTRICT 21, IT ALSO DISTRICT 27, WE BELIEVE BOTH OF THOSE DISTRICTS VIOLATE AND FAIL TO OBSERVE THE TRADITIONAL STANDARD OF REDISTRICTING, WHICH IS THE COMPACTNESS, COMMUNITY OF INTEREST AND THE RESPECT FOR POLITICAL BOUNDARIES. SIMILAR TO ARGUMENT THAT JUSTICE GRIMES WAS DISCUSSING CONCERNING MARION COUNTY. IN REGARDS TO THE CONTIGUITY ARGUMENT, THIS COURT HAS INDICATED THE TEST OF CONTIGUITY IS NOT NECESSARILY BEING ABLE TO DRAW A POINT FROM ONE END OF THE DISTRICT IN REACHES THE OTHER DISTRICT, END OF THE DISTRICT. THAT IN FACT THE EXAMPLE OF THE PRINCIPLE ADOPTED BY THIS COURT IN 1982 REAPPORTIONMENT CASE IS THAT EITHER A DISTRICT THAT IS ONLY JOINED AT A SINGLE CORNER OR RIGHT ANGLE WOULD NOT SATISFY THE CONSTITUTIONAL REQUIREMENTS. THE DISTRICT 27, WHICH WE ARE DISCUSSING, EXTENDS FROM PALM BEACH COUNTY AND ENDS ON THE EASTERN SHORE OF Lake Okeechobee BEE AT A SINGLE POINT. IT THEN REEMERGES ON THE WESTERN SIDE OF THE LAKE AND EXTENDS TO LEE COUNTY. NO PORTION OF THE NORTHERN SHORE IS INCLUDED WITHIN THE DISTRICT. AND ON THE SOUTHERN SHORE, THERE ARE INDIVIDUAL DISCRETE POCKETS OF DISTRICT LAND WHICH ARE SEPARATE AND DISTINCT FROM EACH OTHER. FINALLY THERE IS ALSO A SINGLE ENCLAVE THAT IS WITHIN DISTRICT 39 THAT EXTENDS UP, THAT WAS ADDED ONLY TO INCLUDE 13 PEOPLE.

THAT SAME OPINION, HOWEVER, TALKS ABOUT BODIES OF WATER BEING INVOLVED IN DISTRICTS LIKE THAT. AND THE FACT THERE IS A BODY OF WATER THAT MAY END UP RESULTING IN THIS CORNERING THAT YOU'RE TALKING ABOUT. IT IS NOT PER SE OBJECTION TO THAT, IS THERE?

THE DIFFERENCE HERE, JUSTICE ANSTEAD, THAT DECISION, AND I THINK WAS THE 92 REAPPORTIONMENT CASE, YOU HAD CONTIGUOUS DISTRICTS DIVIDED BY RIVERS OR CHANNELS. ESCAMBIA COUNTY AND BARRIER ISLAND. THIS IS A SITUATION WHERE, AND THE COURT AT THAT TIME INDICATED THAT WE WILL NOT ALLOW A NATURAL BODY OF WATER WHICH DIVIDES OTHERWISE CONTIGUOUS DISTRICT TO NOT ALLOW THE CONSTITUTIONAL REQUIREMENT TO BE FULFILLED. HERE THEY'RE ATTEMPTING TO USE THE WATER ITSELF, NOT AS A BARRIER THAT IS DIVIDING OTHERWISE CONTIGUOUS DISTRICT BUT USING IT ITSELF TO JOIN ALL OF THOSE PARCELS IN ONE COMMON AREA. PARTICULARLY THE ENCLAVES ON THE SOUTHERN PART OF THE LAKE. WE WOULD SUBMIT THAT THE CONSTITUTION REQUIRES MORE THAN FACE SUPERFICIAL ACKNOWLEDGMENT TO THE CONTIGUITY REQUIREMENT. AS FAR AS THE DISTRICTS 21 AND DISTRICT 27 AS TO THE TRADITIONAL STANDARDS FOR REAPPORTIONMENT, I WOULD POINT OUT THAT AT THE FORT MYERS HEARING, WHICH WAS HELD, EVERY INDIVIDUAL AT THAT MEETING, EVERY SINGLE ONE WHO SPOKE AND THE RECORD IS A PART OF THE SENATE'S APPENDIX, INDICATED THAT IN FACT THEY DID NOT WANT TO BE INCLUDED IN A DISTRICT THAT WAS ON THE OTHER SIDE OF THE STATE. THEIR INTERESTS WERE DIFFERENT, THEY HAD DIFFERENT COMMUNITY OF INTERESTS. THE IMPACTS FROM HAVING ACCESS TO THE LEGISLATIVE PROCESS WERE MORE ACKNOWLEDGED IN THE LEE COUNTY AREA. I'LL GIVE YOU A PERFECT EXAMPLE OF WHAT HAS HAPPENED AND WHY THEIR INTERESTS ARE BEING IGNORED. LEE COUNTY HAS A PORT AUTHORITY, AS MANY AREAS DO. AND THAT PORT AUTHORITY GOVERNS THE SOUTHWEST FLORIDA INTERNATIONAL AIRPORT AND PAGE FIELD A COMMERCIAL FACILITY. THOSE FACILITIES GENERATE IN EXCESS OF TWO BILLION DOLLARS ANNUALLY INTO THE ECONOMY OF LEE COUNTY. HOWEVER, THE INTERNATIONAL AIRPORT IS NOW INCLUDED IN A DISTRICT WHERE THE MAJORITY OF THE POPULATION IS IN PALM BEACH COUNTY. AND THAT THE POPULATION WHICH MAY NEVER USE THE AIRPORT, NOR SEE ANY DIRECT BENEFIT. FURTHER, SOUTHWEST FLORIDA INTERNATIONAL WILL COMPETE WITH PALM BEACH INTERNATIONAL FOR GRANTS AND MONIES

THAT ARE AVAILABLE. THAT IS AN AIRPORT THAT CLEARLY THE MAJORITY OF THE DISTRICT WILL RECEIVE BENEFIT FROM. I BELIEVE THERE IS AN INHERENT CONFLICT BECAUSE OF THE COMMUNITY OF INTERESTS. TO MAKE IT EVEN WORSE, PAGE FIELD, WHOSE FUTURE AND DEVELOPMENT IS INTERTWINED WITH THE INTERNATIONAL AIRPORT, IS IN A SEPARATE SENATE DISTRICT THAN THE INTERNATIONAL AIRPORT. WE BELIEVE THAT THIS TYPE OF IGNORING OF THE COMMUNITY OF INTERESTS, IT REALLY DEMEANS THE VOTE AND OF THE CITIZENS OF LEE COUNTY.

MR. STEWART, IF THAT ONE FACTOR TO BE CONSIDERED OR HOW DO YOU FACTOR THAT IN? SHOULD THAT BE AN OVERRIDING FACTOR?

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OR IS THAT JUST ONE OF NUMEROUS FACTORS TO BE CONSIDERED BY THE LEGISLATURE?

CERTAINLY IT IS A FACTOR. IT IS AN IMPORTANT FACTOR THAT THE WILL OF THE PEOPLE SHOULD ALWAYS BE GIVEN DUE DEFERENCE. IT IS NOT THE ONLY FACTOR. AND I AGREE THAT THERE ARE OTHER FACTORS THE LEGISLATURE CAN LEGITIMATELY CONSIDER.

BUT, CAN YOU MAKE THE CASE THAT THAT WAS NOT CONSIDERED?

WELL, YES, SIR, JUSTICE SHAW, I BELIEVE IF IN FACT YOU HAVE A SITUATION WHERE LEE COUNTY, WHICH IS THE MOST POPULOUS COUNTY IN SOUTHWEST FLORIDA, IS NOW DIVIDED UP IN THREE DISTRICTS, THE PEOPLE IN LEE COUNTY ASK NOT TO BE SPLIT. THEY ASKED FOR A MAJORITY VOTE IN AT LEAST ONE SENATE DISTRICT AND THEY WERE GIVEN NONE. I BELIEVE THAT YOU CAN SAY THEIR INTERESTS WERE NOT BEING RECOGNIZED BY THE LEGISLATURE IN DRAFTING THE BOUNDARY, SENATE BOUNDARIES WITHIN LEE COUNTY. I'D ALSO POINT --.

FOLLOWING UP JUST A SECOND ON JUSTICE SHAW'S QUESTION. THE U.S. SUPREME COURT OBSERVES I THINK IN THE LAWYER CASE, THAT FLORIDA HAS A HISTORY OF MULTI COUNTY DISTRICTS. AND THAT IT PURSUES A GOAL OF INCREASING THE NUMBER OF LEGISLATORS WHO CAN SPEAK FOR ANY COUNTY. WHY ISN'T THAT A VALID FACTOR? IF THAT'S CORRECT.

WELL I THINK THAT IT'S THE NUMBER OF INDIVIDUALS WHO WOULD BE REPRESENTING LEE COUNTY IS CERTAINLY A FACTOR. BUT THE ISSUE HERE IS THAT WILL LEE COUNTY HAVE A SIGNIFICANT VOICE IN SELECTING WHO THAT REPRESENTATIVE IS? THEY'RE IN THE MINORITY IN TERMS OF POPULATION IN EACH OF THE SENATE DISTRICTS. THEIR MAJORITY IN THE POPULATION OF LEE COUNTY IS SOMEWHAT DILUTED BECAUSE THEY HAVE BEEN SPREAD TO THE FAR WIND IN THE VARIOUS DISTRICTS. THAT IS THE FACTOR THAT I BELIEVE IS A SIGNIFICANT PROBLEM IN THE WAY DISTRICTS WERE DRAWN HERE. I WOULD ALSO POINT OUT --.

STEWART, I THINK YOUR TIME IS UP. THANK YOU VERY MUCH. MR. GOREN.

MAY IT PLEASE THE COURT, MY NAME IS SAM GOREN FROM FORT LAUDERDALE. I AM HERE ON BEHALF OF THE CITY OF PEMBROKE PINES. WE HAVE LISTENED CAREFULLY TO ARGUMENTS OF MY COLLEAGUES AND WISH TO HIGHLIGHT A COUPLE POINTS WISH YOU TO CONSIDER. CITY OF PEMBROKE PINES IS THE SECOND LARGEST CITY. 138 THOUSAND PEOPLE IN POPULATION AS OF 2002. CITY COMMISSION THERE RUNS ON NON-PARTISAN BASIS, POLITICS NOT AN ISSUE ON THE CONTEXT OF PARTISAN POLITICS AS YOU HAVE HEARD THIS MORNING. AS LARGE CITY IT HAS INTEREST IN CONNECTION WITH THE VOTE OF THE PEOPLE AND RIGHTS THE PEOPLE HAVE IN CONNECTION WHO THEY VOTE FOR AND WHO THEY LOOK LIKE AND WILL BE IN THE CONTEXT OF THE PROCESS. PEMBROKE PINES IS JUST WEST OF THE ATLANTIC OCEAN. THERE IS ONE DISTRICT WHICH JUSTICE ANSTEAD REFERRED TO WHICH WILL ACTUALLY NOW IN THE PLAN AS PROPOSED WILL STRETCH FROM PEMBROKE PINES TO COLLIER COUNTY TO MARCO ISLAND, WHICH FROM THE STANDPOINT OF COMMUNITY INTEREST AND POLITICAL SUBDIVISIONS IS VERY DIFFERENT

THAN THE CONTEXT OF THE KIND OF PLACE THAT IT IS. REGRETLY PEMBROKE PINES AMONG OTHER CITIES ARE CONGESTED, HAVE DIFFICULT TIMES IN CONNECTION WITH SCHOOL OVERCROWDING, CITY OF PEMBROKE PINES MADE EFFORT SEVERAL YEARS AGO TO ESTABLISH CHARTER SCHOOL SYSTEM, SECOND TO NONE, LARGEST SCHOOL SYSTEM IN THE STATE OF FLORIDA. THESE ARE NOT THE SAME KIND OF COMMUNITY INTERESTS THAT WE BELIEVE APPLIES IN NAPLES OR COLLIER COUNTY OR A SMALL FISHING VILLAGE THAT MAY BE IT LITTLE INTEREST OR CONNECTION WITH THE CITY OF PEMBROKE PINES. THIS PLAN WE BELIEVE AS CITY COMMISSION SO STATED IN PUBLIC MEETING DOES NOT MEET THE TEST OF COMPACTNESS. DISTRICT 101 AS WE INDICATED EARLIER DOES DIVIDE THE CITY. JUST A SMALL PORTION OF PEMBROKE PINES WILL BE AFFECTED IF THE CONTEXT OF HAVING ITS VOTERS TRAVEL ALL THE WAY WEST TO TALK TO THE REPRESENTATIVE WHO MAY OR MAY NOT KNOW THEIR ISSUES OR THEIR INTERESTS. CERTAINLY WOULD LIKE TO HAVE THAT INTEREST ARTICULATED. AND WE THINK THAT CREATES AN ISSUE OF VOTER DILUTION IN THE CONTEXT OF BEING HEARD. THERE ARE TWO OTHER DISTRICTS, TWO SENATE DISTRICTS 34 AND 35, WHICH ARE HEAVILY INTO MIAMI-DADE COUNTY WHICH WE THINK ALSO MAY CREATE A DISTANT ISSUE FROM THE SUBDIVISION RESPECT AS WELL AS VOTER DILUTION AS WELL. TIME IS A DISTINGUISHABLE ENTITY, WE MAY BE SMALL PLAYER BUT THE ISSUE WE RAISE BEFORE THE COURT IS IMPORTANT TO ALL PARTIES, PARTICULARLY THOSE WHO RAISED THE OBJECTION AS CITY COMMISSION TOOK ITS STAND IN DOING AS AGAINST THIS PARTICULAR PLAN. THE COURTS HAVE SAID AND THE COURT HERE HAS ACKNOWLEDGED THE FACT JUST BECAUSE IT LOOKS ODD DOESN'T MEAN IT IS NECESSARILY A BAD THING LEGALLY OR CONSTITUTIONALLY. IF YOU LOOK AT THESE DISTRICTS AS THEY APPLY IN THIS ENVIRONMENT, THEY DO MAKE A DIFFERENCE. APPEARANCES DO MATTER IN THE CONTEXT OF THIS SITUATION. I BELIEVE THE SHAW RENO CASE TALKED ABOUT THAT SPECIFICALLY. MOST IMPORTANTLY YOU HAVE HEARD THIS MORNING ARGUMENT ABOUT PUBLIC COMMENTS THAT WERE MADE THROUGHOUT THE STATE OF FLORIDA. AND YES, THEY WERE VERY INTERESTING COMMENTS MADE STATEWIDE. THE INTERESTING FEATURE FOR THE COURT'S BENEFIT THIS MORNING IS THAT THE FOLKS IN COLLIER COUNTY WERE NOT PARTICULARLY INTERESTED IN BEING CONNECTED WITH THOSE IN BROWARD COUNTY AND VICE VERSA. TO THAT EXTENT I THINK IT IS IMPORTANT FOR THE COURT TO NOTE ON THE ISSUE OF COMPACTNESS AND CONTIGUITY AND ALSO COMMUNITY INTERESTS, THOSE INTERESTS SIMPLY WERE THERE AND NOT PERSUASIVE SUFFICIENTLY TO CHANGE THE RESULT.

YOUR CONVICTION OF DETERMINING THAT THE LEGISLATURE DID NOT GIVE THIS FACTOR ENOUGH CONSIDERATION OR PLACE TOO MUCH CONSIDERATION ON THIS FACTOR, ARE WE IN THE POSITION OF MAKING THAT DETERMINATION?

JUSTICE SHAW, I THINK IT IS A VERY IMPORTANT QUESTION. THE ISSUE IS IT IS AN IMPORTANT FACTOR I BELIEVE IN THE OBLIGATION THIS COURT UNFORTUNATELY HAVE TO DEAL WITH. CERTAINLY ARGUE TO THE COURT AND YOU DIRECTLY THAT IT DOES MATTER. IT IS IMPORTANT FACTOR IN THE CONTEXT OF MAKING THAT DECISION. THEY MAY NOT WEIGHT IT AS HEAVILY AS WE MIGHT IN ARGUING BEFORE THE COURT THIS MORNING BUT CERTAINLY IT IS A FACTOR WHICH A LOCAL CITY COMMISSION TOOK INTO ACCOUNT AS BEING IMPORTANT AND APPARENTLY IMPORTANT TO BROWARD COUNTY AS WELL. IN CLOSING, AS I WOULD ARGUE TO THE COURT, APPEARANCES DO MATTER. THE MAPS MAY IN FACT DO REFLECT SOME ODDITIES, UNUSUAL DIRECTIONS, IF YOU HAVE SEEN THE MAPS AND THEY'RE ATTACHED TO OUR PETITION, THEY ARE ODD. THAT IS NOT A BAD THING BUT FROM THE STANDPOINT OF REAPPORTIONMENT CASES, THE STRESS I'D LIKE TO OFFER THE COURT AS I CLOSE IS WHO ACTUALLY SELECTING THE REPRESENTATIVES IN THIS SITUATION? IS IT THE LEGISLATURE ELECTING THE PEOPLE THEY WANT TO VOTE FOR THEM OR IS IT THE PEOPLE THAT ARE BEING DISADVANTAGED NOT BEING ABLE TO VOTE FOR LEGISLATORS GIVEN ALL THESE FACTORS I DESCRIBED EARLIER IN MY PRESENTATION. I THINK PEMBROKE PINES IS A GOOD EXAMPLE OF A CITY SIZABLE PROPORTION, GROWING IN POPULATION, WHO HAS AN INTEREST IN THE PUBLIC PROCESS. AND IN THIS ISSUE THEY ARE NOT INTERESTED IN THE POWERS AND POLITICS OF THE CONVERSATION. COMMISSION RUNS NON-PARTISAN AND THEY MADE THAT COMMENT TO ME IN DIRECTING ME THIS PAST WEEK

TO APPEAR BEFORE YOU AND RAISE THAT ISSUE SPECIFICALLY. IT IS WITH THESE COMMENTS FROM THE CITY COMMISSION AND FOR THE RESIDENTS WHO ALSO RAISED CONCERNS AND OBJECTIONS I ASK YOU SEND THE PLAN BACK AND REJECT IT GIVEN THE NATURE OF THE ARGUMENTS THIS MORNING GIVEN BY MY COLLEAGUES AND ME THIS MORNING. I THANK YOU FOR APPEARING BEFORE YOU. AND WELCOME YOUR DECISION FORTH COMING.

THANK YOU.

MS. WILLIAMS.

MAY IT PLEASE THE COURT, I AM THOMASINA WILLIAMS HERE THIS MORNING ON BEHALF OF THE PETITIONERS RAUL MARTINEZ, VICTOR CURRY AND SOUTHWEST VOTER REGISTRATION EDUCATION PROJECT. I AM HERE THIS MORNING REPRESENTING BLACK VOTERS AND HISPANIC VOTERS FROM AROUND THE STATE, GROUPS THAT HAVE HISTORICALLY LOOKED TO THIS COURT, TO THE COURTS IN GENERAL TO PROTECT THEIR RIGHTS. WHEN THE LEGISLATURE COULD NOT BE TRUSTED TO DO SO. AND THAT IS PRECISELY WHAT THE COURT'S ROLE IS, WHAT ITS CONSTITUTIONAL OBLIGATION IS IN THIS CASE. TO DETERMINE THE VALIDITY OF THE APPORTIONMENT. THIS IS A CASE THAT COMES TO THE COURT AS AN ORIGINAL PROCEEDING. IT IS AN ORIGINAL PROCEEDING, MEANING THAT THERE IS NO PRESUMPTION OF VALIDITY. THE COURT'S ROLE HERE IN CONSIDERING THIS JOINT RESOLUTION IS FUNDAMENTALLY DIFFERENT FROM ITS ROLE IN LOOKING AT THE VALIDITY OF A STATE STATUTE. THINK ABOUT THE FACT THIS VERY SAME LEGISLATURE, THIS VERY SAME PROCESS APPLIED TO THE CONGRESSIONAL PLAN. THE PROCEDURE WAS PRECISELY THE SAME EVERY STEP OF THE WAY THROUGH THE STATE LEGISLATURE. BUT ONCE THE PLAN LEFT THE LEGISLATURE WERE ADOPTED BY THE LEGISLATURE, THEY TOOK VERY, VERY DIFFERENT TURNS. THE CONGRESSIONAL PLAN WENT TO THE GOVERNOR FOR SIGNATURE JUST AS ANY OTHER STATUTE WOULD. BY CONSTITUTION THE REQUIREMENT WAS THAT THIS PLAN, THESE PLANS RATHER, THE JOINT RESOLUTION INCLUDING BOTH THE HOUSE AND THE SENATE PLANS, COME TO THIS COURT FOR DETERMINATION OF THE VALIDITY. THAT IS FUNDAMENTALLY DIFFERENT THAN WE WERE TALKING ABOUT A STATUTE THAT BECOMES LAW AS SOON AS THE GOVERNOR SIGNS IT. THIS JOINT RESOLUTION IS NOT YET LAW.

ARE YOU CLAIMING THAT THIS PLAN VIOLATES THE LIMITED ANALYSIS THAT THIS COURT DID IN THE 92 OPINION? WITH REFERENCE TO VOTING RIGHTS?

WE'RE DEFINITELY SAYING YOUR HONOR THAT THIS PLAN VIOLATES SECTION TWO OF THE VOTING RIGHTS ACT. I WOULD SUBMIT TO YOU, HOWEVER, THAT THE ANALYSIS IN 1992 WAS LIMITED ONLY BECAUSE THE RECORD IN THAT CASE WAS LIMITED. THERE HAS BEEN A LOT OF POSTURE ABOUT THE FACIAL VALIDITY OF THE PLAN. THAT TERM HAS BEEN THROWN AROUND. FACIAL VALIDITY IS NOT STATED IN THE STATE CONSTITUTION. IT SIMPLY SAYS DETERMINE THE VALIDITY. FACIAL IS NOT A WORD THAT ALSO YOU WILL SEE APPEARS ANY PLACE IN THE 1992 OPINION THAT THIS COURT WROTE AFTER REVIEWING THE 1992 JOINT RESOLUTION. AND THAT IS BECAUSE IT HAS TO BE SOMETHING MORE THAN SIMPLY FACIAL. I THINK ONE OF THE PROBLEMS HERE IS CONFUSION HAS BEEN MADE ALMOST INTERCHANGEABLY USING THE TERM FACIAL WITH SUPERFICIAL. THIS COURT'S ROLE IS OBVIOUSLY MORE THAN SUPERFICIAL. THE PLANS BEFORE THE COURT IN 72 AND 82 TALKED ABOUT QUOTE FACIAL VALIDITY BECAUSE THEY TALKED ABOUT LOOKING AT ONLY THE CONSTITUTION. THE REASON THE 1992 OPINION DOES NOT SPEAK OF FACIAL VALIDITY IS BECAUSE IT WENT ON TO RECOGNIZE THAT THIS COURT HAS A CONSTITUTIONAL OBLIGATION TO ALSO DETERMINE WHETHER OR NOT THESE PLANS VIOLATE THE VOTING RIGHTS ACT.

FACIAL IS USED IN MANY WAYS. OF COURSE ONE OF THE WAYS IT IS USED IS A LIMITATION ON THE RECORD THAT MAY BE BEFORE A PARTICULAR COURT. THE RECORD THAT WAS UTILIZED IN MAKING, FOR INSTANCE, IN THIS CASE LEGISLATIVE DECISIONS. SO ARE YOU ASSERTING ON THE

BASIS OF NOT ONLY THE REDISTRICTING THAT WAS ACCOMPLISHED, BUT ON THE BASIS OF THE ACTUAL RECORD THAT WE HAVE HERE, THAT YOU CAN DEMONSTRATE THE INVALIDITY OF A PARTICULAR DISTRICT OR THE ENTIRE DISTRICTING SCHEME?

YES, YOUR HONOR, WE ARE.

SO WOULD YOU?

ABSOLUTELY. WE HAVE TAKEN THE INITIATIVE, THIS SET OF PETITIONERS TOOK THE INITIATIVE TO HAVE A DETAILED ANALYSIS DONE OF THESE DISTRICTS TO DETERMINE WHETHER OR NOT THEY GIVE MINORITY VOTERS AN EQUAL OPPORTUNITY TO ELECT THEIR CANDIDATES OF CHOICE. AND THE CONCLUSIONS THAT THEY DO NOT. I WILL CITE TO THE COURT.

YOU'RE SPEAKING OF THE EXPERT ANALYSIS THAT WAS ATTACHED?

YES, YOUR HONOR.

AS AN APPENDIX?

YES, YOUR HONOR, ATTACHED BY DOCTOR ALLEN LICHTMAN, A VOTING RIGHTS EXPERT.

IS CONSIDERATION OF THAT ANALYSIS, NECESSARILY A FACTUAL CONSIDERATION?

IT IS A FACTUAL CONSIDERATION, YOUR HONOR. IT IS LOOKING AT THE DATA THAT IS ALREADY A PART OF THE RECORD AND DOING ANALYSIS OF THAT DATA.

SO IF YOU'RE GOING TO MAKE THAT KIND OF ANALYSIS, DON'T YOU HAVE TO HAVE THE OPPORTUNITY TO CROSS-EXAMINE THOSE EXPERTS?

THAT IS AN OPPORTUNITY THAT CERTAINLY COULD BE AFFORDED TO THE PROPONENTS OF THE PLAN, TO CROSS-EXAMINE THESE EXPERTS.

WELL ISN'T THAT THE REASON THAT THIS COURT AND, IN 1992 AND REALLY, WHICH WAS SAME ANALYSIS BY THE U.S. SUPREME COURT, WHEN THAT CASE GOT TO THE UNITED STATES SUPREME COURT, SAID THAT DURING THIS 30 DAY PERIOD, THIS COURT'S JUST NOT IN A POSITION TO DO THAT TYPE OF FACT FINDING.

WELL THE COURT SAID WAS ON THE RECORD BEFORE IT, ON THE FACTS THAT WERE AVAILABLE AT THAT TIME, THE MAJORITY OF THE COURT DID NOT BELIEVE THAT THERE WAS SUFFICIENT EVIDENCE IN THE RECORD. FOR EXAMPLE, AT THAT TIME THERE WAS NO EVIDENCE OF VOTER REGISTRATION NUMBERS FOR HISPANICS. THAT INFORMATION IS CURRENTLY IN THIS RECORD. WHAT WE HAVE DONE IS TAKE A LOOK AT THE DATA THAT IS AVAILABLE ELSEWHERE IN THE RECORD AND TO DO AN ANALYSIS OF THAT DATA. AND WE WOULD SUBMIT TO THE COURT THAT THAT ANALYSIS IN AND OF ITSELF SHOWS THAT THESE DISTRICTS PRESENT A LESS OF AN OPPORTUNITY FOR MINORITY VOTERS TO ELECT CANDIDATE OF CHOICE. I WILL USE AS EXAMPLE THE MIAMI-DADE COUNTY DISTRICT THAT HAVE CURRENTLY ELECTED BLACK REPRESENTATIVES. CURRENTLY THERE ARE FOUR SUCH DISTRICTS IN MIAMI-DADE COUNTY. THE ANALYSIS SHOWS THAT WE ARE REALLY RETROGRESSING BACK TO ONLY THREE DISTRICTS BECAUSE DISTRICT 108, THE NUMBERS GO DOWN SO SIGNIFICANTLY THAT MINORITY VOTERS IN THAT PARTICULAR DISTRICT WILL NOT HAVE AN OPPORTUNITY TO ELECT THEIR CANDIDATE OF CHOICE. WE ALSO NOTED AGAIN USING MIAMI-DADE COUNTY AS AN EXAMPLE, THERE IS ANOTHER DISTRICT 118, THAT CLEARLY COULD HAVE BEEN A MAJORITY DISTRICT. IT'S CURRENTLY 47% IN TERMS OF THE BLACK VOTER REGISTRATION. WE HAVE SUBMITTED ANALYSIS FOR THE COURT WHICH SHOWS THAT THAT COULD HAVE GONE OVER 50%. SO WE HAVE TODAY FOUR DISTRICTS. WE ARE TALKING ABOUT A PLAN THAT TAKES THAT NUMBER DOWN TO THREE EFFECTIVE MINORITY

DISTRICT WHEN THERE REALLY COULD HAVE BEEN FIVE DISTRICTS. WE WOULD SUBMIT TO THE COURT THAT BASED UPON THAT TYPE OF FACTUAL EVIDENCE IN THE RECORD, THE NUMBERS SPEAK FOR THEMSELVES. THAT THE COURT WOULD NOT BE REQUIRED TO UNDER GO ANY SORT OF FURTHER DETAILED FACTUAL FINDINGS.

SO THE ANALYSIS YIELD THE SAME NUMBERS WHEN YOU EXAMINE THE ISSUE FROM THE STATEWIDE BASIS? IN OTHER WORDS, CAN YOU MAKE THE SAME CLAIM OF RETROGRESSION IF YOU DO IT ON THE BASIS OF STATEWIDE ANALYSIS COMPARED TO BEFORE?

WHAT WE HAVE DONE IS LOOK AT INDIVIDUAL DISTRICT TO SHOW THOSE AS EXAMPLES STATEWIDE. THE PLAN, IF IT IS INVALID IN MIAMI-DADE COUNTY, OBVIOUSLY THAT WILL GET RID OF THE ENTIRE PLAN.

BUT IF YOU LOOK AT THE OVERALL, THE SCHEME HERE THAT HAS BEEN DEVELOPED, STATEWIDE, THERE IS NO RETROGRESSION WITH REFERENCE TO MINORITY REPRESENTATION, IS THERE?

THERE IS, YOUR HONOR. BECAUSE WE END UP WITH LESS DISTRICTS UNDER THE PROPOSED PLAN THAN WE HAVE TODAY. WE WOULD SUBMIT THAT THAT IS IN FACT RETROGRESSION, THAT IS IN FACT DILUTION.

WHAT ARE THE NUMBERS? MAYBE I'M MISUNDERSTANDING WHAT THE NUMBERS ARE. WHAT ARE THE NUMBERS THAT WE HAVE TODAY AND WHAT ARE THE NUMBERS UNDER THE REDISTRICTING?

TODAY THERE ARE IN FACT 13 MAJORITY DISTRICTS THAT PERFORM FOR BLACK VOTERS. UNDER THE PROPOSED PLAN IN THE JOINT RESOLUTION IN THE HOUSE SIDE, THEY SAY THERE ARE 13 BUT THAT'S AN ILLUSORY NUMBER WHAT I AM SAYING TO YOURSELF. IF YOU LOOK AT THE VOTER REGISTRATION NUMBERS, THE NUMBER REALLY GOES DOWN TO 12. AND THAT IT COULD BE AS HIGH AS 14. USING MIAMI-DADE COUNTY AS AN EXAMPLE OF THAT. SO YOU HAVE TO DO MORE THAN SUPERFICIAL ANALYSIS OF THE NUMBERS JUST TO SAY THERE IS 50% VOTING AGE POPULATION, I THINK JUSTICE SHAW RECOGNIZED IN HIS DISSENT IN 1992, THAT YOU LOOK AT THINGS LIKE VOTER REGISTRATION NUMBERS, AND SAID BECAUSE THE VOTER REGISTRATION NUMBERS FOR BLACK VOTERS WERE ROUGHLY EQUAL TO THE VOTING AGE POPULATION, THEN IT SAW NO PROBLEM WITH THE DISTRICT IN 1992. THAT IS NOT THE CASE HERE.

SOME DEGREE ALSO THOUGH CONTENDING THAT THE, I REALIZE I AM SORT OF PARAPHRASING AND MAYBE THIS IS GOOD BECAUSE I NEED YOU TO CHARACTERIZE IT, THAT IDEALLY, THAT IF WE TAKE THE RACIAL MAKEUP, THAT IDEALLY, HERE IS WHAT THE SCHEME SHOULD BE. IF THE LEGISLATURE UNDER -- IS THE LEGISLATURE UNDER ANY OBLIGATION TO DO THE IDEAL? THAT IS TO DO IT SO THAT EVERYBODY WOULD WALK AWAY AND SAY WELL, WE CAN SEE THAT YOU HAVE REALLY, YOU PRODUCED A CADILLAC IN TERMS OF DECIDING THIS PARTICULAR ISSUE, ASSUMING CADILLACS ARE STILL HIGH QUALITY.

I THINK WHAT YOU'RE REFERRING TO JUSTICE ANSTEAD IS THE ISSUE OF ENFORCED REPRESENTATION. WE ARE NOT ARGUING THAT, NO. I THINK JUSTICE SHAW ASKED AN EARLIER QUESTION, IF YOU ARE ACTUALLY TALKING ABOUT PROPORTIONAL REPRESENTATION FOR BLACK VOTERS, IT WOULD BE MORE LIKE 17 TO 18 DISTRICTS. SO WE ARE CLEARLY NOT ASKING FOR MORE THAN THAT. WHAT WE ARE SAYING IS GOING BACKWARDS IS A PROBLEM. GOING FROM 13 DISTRICTS THAT ACTUALLY PERFORM TO ONLY 12 DISTRICTS THAT PERFORM WHEN YOU COULD ACTUALLY GET 14 DISTRICTS THAT PERFORM, THAT THAT IS CONSTITUTIONALLY ENOUGH FOR THIS COURT TO DETERMINE THIS PLAN IS INVALID AND SEND IT BACK TO THE STATE LEGISLATURE.

PART OF THE DIFFICULTY THAT WE HAVE, AND IT IS LIKE EXAMINING THE TEACHER FROM AMERICAN UNIVERSITY, THE EXPERT THAT YOU HAVE SUBMITTED HERE.

DOCTOR LICHTMAN, YES.

THAT IF WE ARE GOING TO TAKE COMPACTNESS, COMMUNITY OF INTERESTS, EXISTING POLITICAL BOUNDARIES AND LINES, AND IF WE ARE GOING TO TAKE AN EXPERT THEN THAT IS GOING TO SAY WELL IF YOU TAKE THIS PARTICULAR ISSUE, THEN IDEALLY HERE IS THE WAY THAT THESE LINES SHOULD BE DRAWN. BUT ALL OF THOSE ISSUES ARE GOING TO BUMP INTO ONE ANOTHER AT SOME POINT, ARE THEY NOT? AND ISN'T THAT THE QUINTESSENTIAL THINGS THAT LEGISLATURES DO, WHEN THOSE COMPETING CONCERNS BUMP INTO ONE ANOTHER, AS LONG AS THERE IS NOT SOME OVERRIDING CONSTITUTIONAL MANDATE THAT'S THERE, THAT THEY ARE TO RESOLVE THOSE COMPETING CONCERNS AND INDEED ADD A HEAVY LAYER OF POLITICAL CONSIDERATIONS, AND THAT THAT'S PERFECTLY LEGITIMATE?

THERE IS NO QUESTION THAT IN THE REDISTRICTING PROCESS THE LEGISLATURE AS IT IS FACED WITH ANY LEGISLATIVE INITIATIVE, FACED WITH COMPETING CONCERNS. THE PROBLEM WE HAVE IN THIS CASE, THE ONE OF THE MANY PROBLEMS WE HAVE IN THIS CASE IS BECAUSE OF THE LACK OF ANY OBJECTIVE STANDARDS OF CRITERIA HERE, WE CANNOT SAY THAT WELL BECAUSE OF COMPACTNESS, BECAUSE OF RESPECTING POLITICAL SUBDIVISIONS, THAT'S WHY THE NUMBER OF DISTRICTS IN MIAMI-DADE COUNTY GOES DOWN. IN FACT WE KNOW THEY DID NOT RESPECT POLITICAL SUBDIVISIONS, THAT THERE ARE NUMBER OF DISTRICTS IN THE HOUSE IN MIAMI-DADE COUNTY THAT FOR THE FIRST TIME CROSS OVER INTO BROWARD COUNTY. CERTAINLY ONLY ONE DISTRICT HAS A VERY SMALL POPULATION PRIMARILY IN BROWARD THAT COMES DOWN INTO MIAMI-DADE. NOW THERE ARE A NUMBER OF DISTRICTS THAT HAVE SUBSTANTIAL POPULATION IN MIAMI-DADE AS WELL AS IN BROWARD COUNTY. SO THAT CAN'T BE A JUSTIFICATION. THE ISSUE OF COMPACTNESS, IF YOU LOOK, FOR EXAMPLE AT DISTRICT 108 THE ONE IN MIAMI-DADE COUNTY THAT GOES SIGNIFICANTLY DOWN IN THE VOTER REGISTRATION, THEY CAN'T SAY THAT IS BECAUSE WE ARE PRESERVING THE CORE OF EXISTING DISTRICTS BECAUSE OUR ANALYSIS SHOWS, I THINK EXHIBIT 64-I TO OUR BRIEF, THAT IS ANOTHER REPORT BY DOCTOR WESTER SHOWS THEY ONLY PRESERVED A LITTLE OVER 50% OF THAT DISTRICT. IF THE DISTRICT WAS SUBSTANTIALLY UNDER POPULATED THERE WAS NO REASON TO MOVE HALF OF THE PEOPLE OUT OF THAT DISTRICT INTO ANOTHER DISTRICT. SO IN ABSENCE OF OBJECTIVE CRITERIA, WE REALLY HAVE NO IDEA ANY JUSTIFICATION FOR THESE MOVING EXCEPT RACE PREDOMINATED OVER THE CONSIDERATION. WHICH IS AGAIN WHY I GO BACK TO THE FACT THAT THIS RESOLUTION DOES NOT COME TO THE COURT WITH ANY PRESUMPTION OF VALIDITY. THE BURDEN SHOULD REALLY BE ON THE PROPONENT, ON THE HOUSE AND THE SENATE TO EXPLAIN TO THIS COURT WHY THIS PLAN IS VALID AND WHY IT DOES NOT VIOLATE THE RIGHTS OF MINORITY VOTERS WHEN YOU HAVE A SUBSTANTIAL DECREASE IN THE PERFORMANCE OF THE DISTRICTS FOR MINORITIES. ANOTHER EXAMPLE, AS I SAID, I AM HERE REPRESENTING BOTH BLACK VOTERS AND HISPANIC VOTERS. WE ALSO SEE STATISTICALLY ASIDE FROM SECTION TWO ANALYSIS THAT REQUIRES MORE FACT INTENSIVE INQUIRY, WHICH WE SUBMIT IS SUFFICIENT ON ITS FACE FOR THIS COURT TO THROW THIS PLAN OUT AND SEND IT BACK TO THE LEGISLATURE. IF YOU LOOK ALSO AT THE ANALYSIS AS IT RELATES TO CUBAN HISPANICS AND NON-CUBAN HISPANICS, AND THERE ARE NO, IF YOU ARE NON-CUBAN HISPANIC, YOU ARE MUCH MORE LIKELY TO BE IN NOT MAJORITY HISPANIC DISTRICT. AGAIN THERE IS NO EXPLANATION ON THE RECORD WHY THAT IS. STATISTICIANS WILL TELL YOU IT IS LESS IN ONE IN 10,000 CHANCE THAT THAT HAPPENED ACCIDENTALLY. SO AGAIN, THAT LEAVES THE INFERENCE THAT THERE IS IN FACT DISCRIMINATION AGAINST BOTH BLACKS AND HISPANICS ON THE RECORD AND THIS COURT SHOULD THROW THIS PLAN OUT.

THANK YOU MS. WILLIAMS, YOUR TIME IS UP.

THANK YOU, YOUR HONOR.

I BELIEVE NOW WE ARE GOING TO HAVE REBUTTAL. MR. HATCHETT.

MR. HATCHETT, WHAT DO YOU SAY ABOUT WHAT APPEARS TO BE REALLY AN EXTRAORDINARY, AS COMPARED TO OUR PROCEEDINGS WE HAD 10 YEARS AGO AND BEFORE THAT, REALLY THERE HAS BEEN HERE AN EXTRAORDINARY OUTPOURING OF OBJECTIONS, FROM PLACES THAT YOU WOULDN'T PERHAPS EXPECT THAT, WITH THE POLITICAL LAYERING THAT WE ARE TALKING ABOUT HERE. HOW DO YOU RESPOND TO ALL OF THESE VARIED CONCERNS ALL THE WAY FROM THE CONCERNS OF PARTICULAR COMMUNITIES OF INTEREST TO BLACKS AND HISPANICS, NON-CUBAN HISPANICS, THE TREMENDOUS VARIETY, BUT REALLY AN EXTRAORDINARY OUTPOURING HERE OF OBJECTION?

WELL I THINK IT IS A TRIBUTE TO THE HOUSE OF REPRESENTATIVES AND TO THE SENATE FOR THE AMOUNT OF TIME THAT THEY SPENT WITH THIS PLAN AND THE AMOUNT OF INVOLVEMENT THAT THEY ALLOWED THE PUBLIC TO HAVE IN THIS PLAN. FOR EXAMPLE, THIS WAS PROBABLY THE FIRST TIME THAT YOU COULD GO ON THE INTERNET AND ACTUALLY SEE THE PLANS AND REVIEW THE PLANS OR EVEN SEND IN YOUR OWN PLANS BECAUSE OF THE TECHNOLOGY CHANGE. THE PACKETS THAT WERE PASSED OUT WERE FAR MORE EXTENSIVE THAN IN PRIOR YEARS. THE LEGISLATURE THIS TIME TOOK GREAT PLEASURE IN INVITING THE PUBLIC IN AND MAKING COMMENTS AND CONSEQUENTLY THE PUBLIC DID BECOME INVOLVED. AND WHEN YOU'RE MAKING CHOICES, AS SOMEONE SAID THAT THERE ARE MANY, MANY INTERESTS TO BE CONSIDERED IN DRAWING A LINE. SO WHEN YOU GO OUT TO THE PUBLIC AND YOU SAY TO THE PUBLIC, PARTICIPATE IN THIS PROCESS, THEY PARTICIPATE.

WASN'T THE WHOLE GOAL OF THAT REALLY THEN TO MINIMIZE, AFTER THE FINAL PRODUCT WAS ACCOMPLISHED, THESE KINDS OF OBJECTIONS? INSTEAD OF TO MAXIMIZE, AS I SAY, WE SEEM TO HAVE AN EXTRAORDINARY NUMBER.

WELL THE GOAL WAS FOR THE LEGISLATORS TO BECOME FULLY INFORMED OF WHAT THE CITIZENS WANTED WHEN THE LINES WERE DRAWN. THE CITIZENS DID NOT GET THAT. MANY OF THESE PEOPLE HERE ARE FOR THAT VERY REASON. WHEN YOU HAVE CONTESTING INTERESTS AND YOU MUST HAVE DISTRICTS OF 133,000 PEOPLE. FOR EXAMPLE, ONE OF THE COMMENTERS SAID YOU HAVE TO GO 50 MILES A CERTAIN NUMBER OF MILES TO GET TO A REPRESENTATIVE. WELL IF YOU'RE IN A DENSELY POPULATED PART OF THE STATE, THAT'S EXACTLY WHAT'S GOING TO HAPPEN. BECAUSE SOMEHOW YOU HAVE TO GET 133,000 PEOPLE. AND IF THEY'RE IN A CONDO, IN WEST PALM BEACH LIKE CENTURY VILLAGE, YOU MAY HAVE ONE DISTRICT RIGHT THERE. BUT IF YOU'RE OUT IN THE PANHANDLE, YOU'RE GOING TO GO 50 TO 60 MILES IN ORDER TO MEET THE ONE MAN, ONE VOTE REQUIREMENT.

BUT WHERE YOU HAVE AN EYE POPPING DISTRICT THAT GOES FROM COAST TO COAST, IS THERE SOME OBLIGATION AT THAT POINT FOR THE LEGISLATURE TO EXPLAIN WHY THAT IS SO OR CAN THE LEGISLATURE JUST RELY ON CASES THAT SAY THAT WE ALMOST HAVE CARTE BLANCHE TO DO AS WE DESIRE?

WELL LET ME POINT --.

ESPECIALLY WHEN THEY HAVE TRAVELED, INVITED THE PUBLIC IN TO GIVE THEIR INPUT.

LET ME POINT OUT QUICKLY THAT THE HOUSE OF REPRESENTATIVES DOES NOT HAVE ANY SUCH DISTRICTING AS THAT. BUT, EVEN IF YOU HAD SUCH A DISTRICT, THERE MAY BE REASONS THAT THAT DISTRICT WOULD MOVE THAT FAR. IT IS NOT STRANGE, FOR EXAMPLE, IF YOU LOOK AT THE MAP OF THE 199 2:YOU HAVE DISTRICT 101 THAT NOT ONLY RUNS FROM DADE AND COLLIER COUNTY. IT RAN DADE AND BROWARD COUNTY THE LAST 10 YEARS. AND THIS COURT APPROVED IT. SO AS YOU LOOK AT THESE DISTRICTS THAT RUN LONG DISTANCES, AND COMPARE THEM TO THE DISTRICT THAT ARE NOW IN EFFECT, THAT THIS COURT HELD TO BE VALID, YOU WON'T FIND VERY MUCH DIFFERENCE.

MR. HATCHETT, WOULD YOU RESPOND TO THE LAST COMMENTS THAT WERE MADE BY COUNSEL

WITH REGARD TO THE RETROGRESSION AND IN TERMS OF PERFORMANCE AND I BELIEVE A LOT OF THE ANALYSIS WAS DONE FROM POPULATIONS STATISTICS AND THEN IT WAS DONE FROM VOTING AGE POPULATIONS STATISTICS AND NOW WE HAVE THROWN IN PERFORMANCE. HOW DO YOU SEE THAT AS FACTORING IN AND THE ALLEGATION THAT THERE IS A FACIAL SECTION TWO PROBLEM? WHAT WE ARE DEALING WITH SPECIFICALLY WITH THOSE LAST COMMENTS.

WELL AS TO ALL OF THAT INFORMATION, THE HOUSE AND SENATE PRESENTLY HAVE A MOTION PENDING TO STRIKE ALL OF THAT EXPERT TESTIMONY. NO ONE BELIEVED THAT YOU COULD PRODUCE EXPERT TESTIMONY AT A HEARING SUCH AS THIS AND WE ALL HAD TO ANSWER ON THE SAME DAY THE PROPONENTS AND THE OPPONENTS. SO EVERYONE WAS CAUGHT BY SURPRISE WHEN EVIDENCE OF THAT NATURE WAS BROUGHT IN JUST AS THE CHIEF JUSTICE HAS INDICATED, NO ONE QUALIFIED THESE PEOPLE AS EXPERTS, NO ONE HAS SEEN THEIR REPORTS. NO ONE HAS CROSS-EXAMINED THEM. WE HAVE NO IDEA WHETHER WHAT IS STATED IN THAT BRIEF OR IN THOSE REPORTS ARE VALID AT ALL. AND WE WERE NOT GIVEN THE OPPORTUNITY TO COMMENT AFTER THEY WERE FILED. SO IN EFFECT WE ARE UNABLE AT THIS TIME TO MEET THE ORDINARY KINDS OF, MOUNT THE ORDINARY KINDS OF CHALLENGES THAT WE WOULD HAVE MOUNTED IN THIS CASE. BUT AGAIN, I POINT OUT TO YOU THAT HOW A DISTRICT WILL PERFORM IS TO BE DECIDED BY HOW IT HAS PERFORMED. AND KEEP IN MIND THAT SIMPLY BECAUSE THERE IS A LARGE GROUP OF MINORITY VOTERS DOESN'T GIVE THAT MINORITY GROUP THE RIGHT TO HAVE A MINORITY MAJORITY DISTRICT. THEY MUST FIRST PROVE THAT THEY'RE POLITICALLY COHESIVE. AND IF IN THAT DISTRICT THERE IS CROSS VOTING, THEN THAT GROUP OF PEOPLE ARE NOT ENTITLED TO HAVE A DISTRICT DRAWN SO THAT THEY CAN ELECT THE CANDIDATE OF THEIR CHOICE. SO IT IS NOT JUST A CONCENTRATION OF PEOPLE. IT IS A COMPACTNESS THAT CONCENTRATION, COHESIVENESS AND BLOCK VOTING THAT WOULD HAVE TO BE SHOWN. AND YOU CAN ONLY DO THAT IN A LONG, LONG EXTENSIVE HEARING WHERE ALL KINDS OF TESTIMONY WOULD COME IN, INCLUDING ELECTIONS GOING BACK EIGHT TO 10 YEARS. IF YOU WANT TO KNOW HOW A DISTRICT IS LIKELY TO PERFORM.

MR. HATCHETT, WOULD YOU ADDRESS THE ARGUMENT BY THE ATTORNEY GENERAL AND OTHERS THAT THERE IS NO PRESUMPTION OF CORRECTNESS HERE, AND THAT THE RECORD HERE MUST ESTABLISH THAT THE PLAN IS VALID IN ORDER FOR THIS COURT TO BE ABLE TO RULE IT VALID?

THAT WOULD TURN THE LAW ON ITS HEAD, TO SAY THAT ANY PIECE OF LEGISLATION COMES TO A COURT AND INDEPENDENT AND SEPARATE BRANCH OF GOVERNMENT, WOULD HAVE TO COME HERE AND EXPLAIN WHY IT DREW A LINE IN A CERTAIN PLACE. YOUR CASE LAW SAYS THAT THAT IS NOT THE SITUATION, THAT IT IS PRESUMED TO BE VALID. SORRY, COMES WITH A PRESUMPTION OF VALIDITY. LIKE ANY OTHER PIECE OF LEGISLATION ADDED HERE, ANYONE CITE ANY CASE TO SAY THAT THIS COURT MAY SUPERINTENDENT SUPER INTEND THE LEGISLATURE OF THE STATE OF FLORIDA. HERE IS WHAT YOU SAID IN 1992 REGARDING YOUR ROLE IN REAPPORTIONMENT. YOU WERE TALKING IN 92 ABOUT YOUR OPINION IN 1982. YOU SAID AT THAT TIME, REFERRING TO 1982, WE STATED THAT THE SOLELY QUESTION -- SOLE QUESTION TO BE CONSIDERED IN THE APPORTIONMENT PROCESS WAS THE FACIAL CONSTITUTIONAL VALIDITY OF THE APPORTIONMENT PLAN. THAT'S HOW YOU DEFINED YOUR ROLE THE LAST TIME. I POINT OUT TO THE CURRY COMMENTS, THERE IS NO REQUIREMENT THAT MAJORITY MINORITY DISTRICTS BE MAXIMIZED. THAT WAS HELD BY THE SUPREME COURT IN THE LAST GO ROUND, DEGRANDY VERSUS JOHNSON. NO REQUIREMENT TO MAXIMIZE MINORITY MAJORITY DISTRICTS. NO REQUIREMENT OF PROPORTIONALITY BETWEEN VOTERS. ALSO HELD IN DEGRANDY VERSUS JOHNSON ON THE LAST REAPPORTIONMENT PROCESS. IT WAS MR. RYAN WHO SAID THERE IS JUST SO MANY ISSUES THAT ONE MUST CONSIDER, AND THAT'S EXACTLY WHY THE JOB IS LEFT TO THE LEGISLATURE. THERE ARE ALL KINDS OF ISSUES AND CONCERNS THAT MUST BE ADDRESSED AND THEY ARE ADDRESSED BY THE LEGISLATURE. AS TO SHAW VERSUS RENO AND RACE, THE PRESENT STATE OF THE LAW IS AS CHIEF JUSTICE SAID, IN ENSLEY VERSUS Gramaldi, COURT SAID RACE CANNOT BE THE PREDOMINANT FACTOR. HOWEVER SUPREME COURT IN INTERPRETING CIVIL RIGHTS ACT SAYS LEGISLATURE MUST BE RACE CONSCIENCE WHEN DRAWING DISTRICTS. SO ON ONE HAND

THE LEGISLATURE MUST BE RACE CONSCIENCE, ON THE OTHER HAND, RACE CANNOT BE THE PREDOMINANT FACTOR. AND SO WE TAKE THAT TO SAY YOU COULD BE RACE CONSCIENCE BUT YOU CAN'T BE RACE DRIVEN. AND THAT'S WHAT THIS LEGISLATURE KNEW AND THE HOUSE OF REPRESENTATIVES KNEW WHEN IT WENT INTO THIS PROCESS. SO YOU SEE THESE MINORITY MAJORITY DISTRICTS BECAUSE THEY ARE REQUIRED BY THE VOTING RIGHTS ACT. YOU SAY WELL THEY COULD HAVE DRAWN ONE MORE, THERE IS NO REASON TO THINK THAT YOU HAVE TO MAXIMIZE THE LAW SAYS OTHERWISE. BUSH V GORE HAS ABSOLUTELY NOTHING TO DO WITH THIS CASE. BUSH V GORE TALKED ABOUT STANDARDS WHEN IT WAS TALKING ABOUT THE FUNDAMENTAL RIGHT OF A VOTER TO HAVE A VOTE COUNTED. THAT'S NOT WHAT WE ARE CONCERNED WITH TODAY. WE ARE CONCERNED HERE TODAY WITH THE SEPARATION OF POWERS AND ONE BRANCH'S INTERACTION WITH ANOTHER BRANCH'S PRODUCT. AND THAT'S A FAR WAY FROM TALKING ABOUT THE FUNDAMENTAL RIGHT OF A VOTERS TO HAVE A VOTE COUNTED. SO GORE V BUSH MEANS NOTHING AT ALL. THANK YOU YOUR HONOR.

THANK YOU MR. HATCHETT. MR. RICHARD?

MAY IT PLEASE THE COURT. WITH RESPECT TO TISSUE OF PRESUMPTION OF VALIDITY, THIS COURT MADE CLEAR IN ITS 1972 ANALYSIS THAT A JOINT RESOLUTION OF APPORTIONMENT IS NO DIFFERENT THAN ANY OTHER RESOLUTION OR BILL PASSED BY THE LEGISLATURE AND THAT IT DOES COME TO THIS COURT WITH THE PRESUMPTION OF VALIDITY. THIS BECOMES SIGNIFICANT PARTICULARLY WHEN THERE IS SIX MEMBERS OF THIS COURT SITTING TO DECIDE A CASE. ONE MUST ASK IN THE EVENT -- AND THERE MAY BE 7 MEMBERS BECAUSE I DON'T KNOW WHETHER OR NOT JUSTICE QUINCE IS GOING TO HAVE AN OPINION IN THIS CASE, BUT WHAT THE CONSTITUTION SAYS IF THIS COURT FINDS THAT THE RESOLUTION IS INVALID, IT SENDS IT BACK TO THE LEGISLATURE TO CONFORM WITH THE OPINION OF THE COURT. NOW ONE CAN CONCEIVE OF A CIRCUMSTANCE IN WHICH THE COURT IS SPLIT EVENLY AND THIS IS NO OPINION, IN WHICH CASE THERE IS STILL AN APPORTIONMENT, IT IS THE APPORTIONMENT THE LEGISLATURE PASSED. SO I DON'T THINK THIS IS AN OVERRIDING ISSUE FOR US TO ADDRESS TODAY THOUGH. BECAUSE I THINK CLEARLY BASED UPON THE STANDARDS ESTABLISHED BY THIS COURT AND THE UNITED STATES SUPREME COURT, WE DO HAVE A VALID BILL. I DO WANT TO ADDRESS JUSTICE ANSTEAD'S COMMENT WITH RESPECT TO THE OUTPOURING OF CRITICISM REGARDING THIS PLAN. I THINK THAT IS SOMEWHAT DECEPTIVE BECAUSE WE'RE ALWAYS GOING TO HEAR MORE FROM THOSE WHO OBJECT TO A PLAN THAN FROM THOSE WHO ARE SATISFIED WITH IT. THERE WERE HUNDREDS OF THOUSANDS OF PERSONS AND VOTING AGE INDIVIDUALS IN EACH OF THESE DISTRICTS, AND WE HAVE SEEN ONLY A HANDFUL OF THEM THAT HAVE BEEN DISSATISFIED ENOUGH TO COMMENT ON THIS BILL. THE QUESTION IS, BECAUSE MOST OF THOSE COMMENTS GO TO POLICY, MOST OF THOSE COMMENTS ARE FROM INDIVIDUALS WHO ARE UNHAPPY WITH THE MANNER IN WHICH THEIR LOCAL AREA, WHETHER A CITY OR A COUNTY, HAS BEEN SPLIT UP. THE QUESTION IS, IS THIS LEGISLATURE -- THIS COURT TO BECOME A SUPER LEGISLATURE?

MR. STEWART RAISED A VERY SPECIFIC CHALLENGE TO ONE OF THE DISTRICTS. WOULD YOU RESPOND TO THOSE CHALLENGES AND USING A BODY OF WATER TO ACTUALLY JOIN RATHER THAN IN THE MANNER AS CONTEMPLATED BY EARLIER DECISIONS. AND HE MADE THE SPECIFIC ARGUMENT THAT WE HAVE, THESE ARE NOT THE DISTRICT IS NOT CONTIGUOUS. COULD WE HAVE YOUR RESPONSE WITH REGARD TO THAT SPECIFIC ARGUMENT RATHER THAN THE GENERALITIES OF PEOPLE OBJECTING? WHAT'S YOUR RESPONSE TO HIS?

YES, SIR. THIS COURT AS YOU KNOW EXPRESSLY ADDRESSED THAT IN 1992 ON THIS QUESTION OF WATER WAYS IN THE FIRST PLACE. REJECTS THE NOTION THAT THE LEGISLATURE HAS EVER INDICATED THAT IT BELIEVES THAT IT CAN USE THE GULF OF MEXICO OR THE ATLANTIC OCEAN AS WATER WAYS THAT CONNECT DISTRICTS. AND I DON'T THINK ANYBODY WOULD SUGGEST THAT IT COULD DO THAT. BUT WHAT THE COURT DID SAY IN 1992, IT SAID THERE ARE SO MANY INLAND WATER WAYS WITHIN THIS STATE THAT IF WE WERE TO SAY THAT A WATER WAY CANNOT, CANNOT BE CONTIGUITY WHEN DISTRICT IS DIVIDED BY A WATER WAY, WE WOULD BE

IMPOSING AN UNREASONABLE ADDITIONAL BURDEN UPON THE LEGISLATURE. THIS COURT WAS VERY SPECIFIC IN 1992 AND I'LL QUOTE WHAT THE COURT SAID. IT SAID CONTIGUITY DOES NOT REQUIRE TRAVEL BY TERRESTRIAL RATHER THAN MARINE FORMS OF TRANSPORTATION. AND IT SAID THE FACT THE DISTRICT IS ENTIRELY SEPARATED BY WATER WITH NO BRIDGE SO THAT THERE CAN BE NO TRAVEL FROM ONE PART OF THE DISTRICT TO THE OTHER WITHOUT GOING OUTSIDE THE DISTRICT DOES NOT MAKE THE DISTRICT INVALID. NOW THE LEGISLATURE RELIED UPON THAT VERY CLEAR STATEMENT BY THIS COURT IN 1992 OF THE REQUIREMENT FOR CONTIGUITY IN THE FLORIDA CONSTITUTION. AND UNLESS THE COURT IS PREPARED TO CHANGE THAT INTERPRETATION, THERE IS NOT A SINGLE SENATE DISTRICT THAT IS NOT contiguous within THE MEANING OF THE FLORIDA CONSTITUTION. WITH RESPECT TO TISSUE OF THE SPLITTING OF COUNTIES, IF I MAY RETURN TO THAT FOR JUST A MOMENT, THE DIFFICULTY WITH THAT IS THAT THIS LEGISLATURE WOULD HAVE TO BE IN HOLDING THE SAME HEARINGS THAT THE LEGISLATURE HAS HELD. AND I MIGHT NOTE THAT YOU CANNOT RELY ON THE RECORD BASED AT LEAST UPON THE COMMENTS IN ONE BRIEF THAT SAID THAT THE HEARINGS THAT THE LEGISLATURE HAD WERE INADEQUATE. SO THE ISSUE IS THAT THIS COURT WOULD HAVE TO BEGIN HOLDING HEARINGS, HEAR NOT JUST FROM THE HANDFUL OF OBJECTORS WE HEARD HERE, BUT FROM THE THOUSANDS OF OTHER PEOPLE WHO MIGHT HAVE LIKED THIS PLAN AND DECIDE HOW IT WOULD REDRAW THE LINE. I THINK IF THERE IS ANYTHING THAT IS CLEAR HERE, IT IS THAT THIS IS A POLICY ISSUE. I THINK IT IS UNFORTUNATE THAT THERE WILL ALWAYS BE SOME PERSON WHO ARE UNHAPPY WITH THAT POLICY. BUT THE FACT REMAINS, THAT THE CONSTITUTION HAS GIVEN TO THE LEGISLATURE OF THE STATE OF FLORIDA THE JOB OF DETERMINING NOT ONLY DISTRICT LINES, BUT COUNTY AND CITY LINES. WHICH THE LEGISLATURE CAN CHANGE. INDEED THE LEGISLATURE CAN ABOLISH COUNTIES AND CITIES. THAT'S A LEGISLATIVE DETERMINATION.

YOU'RE SPLITTING YOUR TIME MR. RICHARD.

I WOULD URGE THIS COURT TO FIND THE SENATE PLAN VALID. THANK YOU.

THANK YOU. MR. SCOTT.

MAY IT PLEASE THE COURT. FIRST OF ALL, I WOULD LIKE TO SAY SOMETHING ABOUT, YOU KNOW, IN FLORIDA, IF WE WERE ALL ONE COLOR, IF WE WERE ALL ONE SOCIOECONOMIC LEVEL, IF WE WERE SHAPED LIKE IOWA IN A SQUARE, INSTEAD OF HAVING OUR 16 MILLION PEOPLE SPREAD MOSTLY ALONG A THOUSAND MILES OR SO OF COAST LINE, THEN THE LEGISLATURE'S JOB HERE WOULD HAVE PERHAPS BEEN EASIER. I WOULD SAY THAT ONE SIZE CLEARLY DOES NOT FIT ALL. AS THE ATTORNEY GENERAL HAS TRIED TO MAINTAIN THAT THERE SHOULD BE SOME SORT OF FIXED STANDARD THAT FITS EVERYWHERE IN FLORIDA. WITH GREAT RESPECT TO JUSTICE GRIMES, YOU START REDISTRICTING SO THAT YOU CAN END UP WITH ONE PERSON, ONE VOTE. IN MONROE COUNTY, LIKE FILLING UP A BATHTUB. AND IN PENSACOLA, COMING IN BECAUSE WE ARE A PENINSULA. YOU CANNOT JUST SAY OKAY, MARION COUNTY, WE ARE GOING TO START THERE, BECAUSE YOU COULD WELL END UP WITHOUT ONE PERSON, ONE VOTE BY THE TIME YOU GET TO THE OTHER ENDS. AND AGAIN, THIS IS FOR THE LEGISLATURE. THIS IS WHAT THEY TOOK GREAT PAINS IN LISTENED A LOT. MAYBE, YOU KNOW, MAYBE I MIGHT DO IT A LITTLE DIFFERENTLY SOMEWHERE. BUT I DON'T VOTE OVER THERE ANY MORE. AND THE ATTORNEY GENERAL MIGHT DO IT DIFFERENT, BUT YOU KNOW, HE CAN RUN TO THE LEGISLATURE AND THEN HE CAN DO IT AND BE A PART OF THAT POLICY MAKING BODY. I THINK THE PLAN IS CLEARLY CONSTITUTIONAL. WENT TO GREAT PAINS IN OUR BRIEFS AND OUR RECORDS REFLECT THAT, THAT THE MINORITY DISTRICTS IN THE SENATE ARE FAIR. THAT THERE WAS NO RETROGRESSION UNDER SECTION FIVE, WHICH THE ATTORNEY GENERAL ADMITS. WE MAINTAIN THERE IS NO SECTION TWO VIOLATIONS. MS. WILLIAMS, I WOULD SAY TO HER IF THERE IS A SECTION TWO VIOLATION, GO TO COURT. BUT SHE'S ALREADY IN COURT. THEY'RE ALREADY SUING US IN DADE COUNTY. SO, YOU KNOW, THAT'S THE PLACE WHERE EVERYBODY GETS A CHANCE TO HAVE THEIR EXPERT. MR. LICHTMAN I'M SURE IS PERHAPS QUALIFIED. BUT THERE ARE OTHERS WHO WOULD LIKE TO HAVE THEIR EXPERT AND

A CHANCE TO CROSS-EXAMINE AND A CHANCE TO GET INTO THE ISSUES, SOME OF WHICH WERE RAISED ESSENTIALLY FOR THE FIRST TIME CERTAINLY AS FAR AS THE SENATE IS CONCERNED, PARTICULARLY WITH REGARD TO THE COUNTRY OF ORIGIN OF HISPANIC VOTERS. THERE COULD WELL BE OTHER EXPLANATIONS FOR THAT, SUCH AS THE FACT THAT PERHAPS PEOPLE WHO ARE FROM CUBA TEND TO LIVE MORE TOGETHER THAN AND OTHERS ARE SPREAD. THERE ARE ALL SORTS OF EXPLANATIONS FOR WHAT STATEMENTS THAT ARE MADE. AND THE COURT HAS NOT RULED ON STRIKING THOSE EXPERT OPINIONS. BUT WHETHER YOU DID OR NOT, THERE IS STILL WAY OUTSIDE OF WHAT WE'RE ALL ABOUT HERE. PARTISAN GERRYMANDERING, SURE, IT'S JUSTICIABLE ISSUE. WE KNOW OF NO REPORTED CASE WHERE THAT HAS EVER BEEN UPHELD. A PARTISAN CLAIM. MAYBE THERE WILL BE ONE. BUT LET THEM GO TO COURT. ON ITS FACE HERE, I WANT TO -- ABOUT THE 1968 CONSTITUTION, I SEE MY TIME IS UP, BY THE ATTORNEY GENERAL. THEY KNEW WHAT THEY WERE DOING THERE. THEY HAD JUST BEEN SUED FOR FIVE OR SIX YEARS, THEY WERE IN SESSION UP HERE FOR EIGHT TO TEN MONTHS AT A TIME ON ONE PERSON, ONE VOTE. THAT'S THE KIND OF THING THAT THEY WANTED YOU TO REVIEW HERE, IS ONE PERSON, ONE VOTE. WHETHER WE MET THE EQUAL PROTECTION. WHETHER LATER YEARS WE COMPLIED WITH THE VOTING RIGHTS ACT. SO, I WOULD RESPECTFULLY URGE YOU TO UPHOLD THE VALIDITY OF THIS PLAN AND THANK YOU SO MUCH.

THANK YOU. COURT IS VERY APPRECIATIVE FOR THE INPUT OF ALL COUNSEL AND ALL OF THOSE WHO TOOK THE TIME TO FILE COMMENTS WITH THE COURT. IN THIS EXTREMELY IMPORTANT MATTER. COURT WILL NOW BE IN RECESS.