

Redistricting: Introduction to Legal Concepts

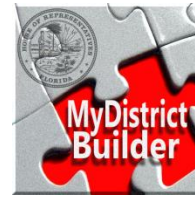
Presentation to:

House Redistricting Committee, Congressional Redistricting
Subcommittee, House Redistricting Subcommittee and Senate
Redistricting Subcommittee

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Overview of Remarks



Introduction:

- Census (Article 1, Section 2 U.S. Constitution)
- What is redistricting?

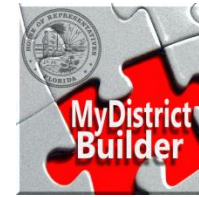
Florida legal requirements:

- Florida Constitution (Article III, Sections 16, 20 and 21)

Federal legal requirements:

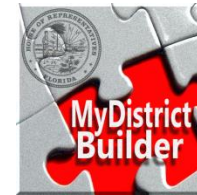
- U.S. Constitution (Article I, Section 4)
- “One Person, One Vote”
- 14th Amendment to the U.S. Constitution
- Voting Rights Act

Census



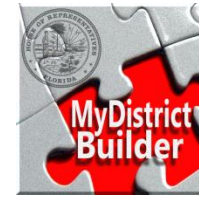
- ❑ Every 10 years, the U.S. Constitution (Article I, Section 2) mandates a headcount of everyone residing in the United States.
- ❑ These population totals determine each state's apportionment of Congressional representation.
- ❑ Data from the 2010 Census is the foundation for reapportionment and redistricting in all states.

Reapportionment vs. Redistricting



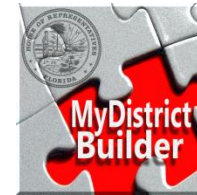
- The term “Reapportionment” usually refers to the task of dividing the states population by the number of congressional seats apportioned to the state.
- Whereas, the task of “Redistricting” is the process of dividing the population of the state by the number of seats in each chamber of the state legislature.
- Both are constitutional requirements, and both the Florida Constitution and the U.S. Constitution require this process to commence every ten years, after the census.

U.S. Constitution



- ❑ Article 1, Section 4 of the Constitution of the United States grants to each State Legislature the exclusive authority to apportion the seats designated to that state, by providing legislative bodies of the states with the authority to determine the times, place, and manner of holding elections for senators and representatives.

Florida Constitution

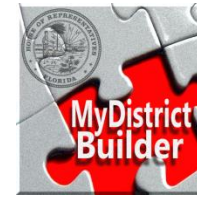


- ❑ Article III, Section 16 of the Florida Constitution governs state legislative redistricting:
 - ❑ Between 30 to 40 State Senate seats
 - ❑ Between 80 to 120 State House seats
 - ❑ Contiguity
 - ❑ Consecutively numbered
 - ❑ Timeline

- ❑ Article III, Section 20 of the Florida Constitution:
 - ❑ Amendment 6 – Standards for congressional redistricting

- ❑ Article III, Section 21 of the Florida Constitution:
 - ❑ Amendment 5 – Standards for state legislative redistricting

2012: After Legislative Enactment



Legislative Redistricting Plans

15 Days – Attorney General submits Legislative plans to FL Supreme Court

30 Days – FL Supreme Court upholds the Legislative plans

60 Days – US DOJ preclears the Legislative plans

June 18-22 – Qualifying for state and federal elections in Florida

Congressional Redistricting Plan

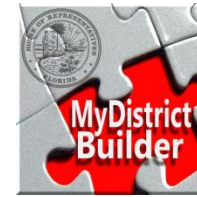
7 or 15 Days – Governor signs Congressional plan into law

NO AUTOMATIC COURT REVIEW

60 Days – US DOJ preclears the Congressional plan

June 18-22 – Qualifying for state and federal elections in Florida

One Person, One Vote

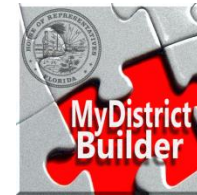


- Forbids major disparities in the creation of congressional and state legislative districts.

- These potential disparities are commonly referred to as the district's deviation from the ideal population number.

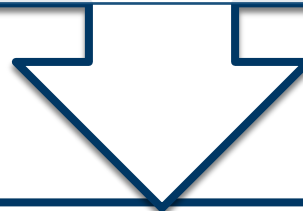
- Divide Florida's total population (18,801,301) by:
 - 120 State House districts
 - 40 State Senate districts
 - 27 congressional districts

Ideal Population



After the 2000 Census, the ideal populations for each district in Florida were:

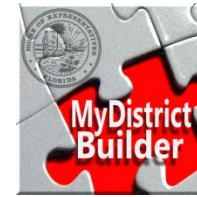
Congressional 639,295	State Senate 399,559	State House 133,186
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After the 2010 Census, the ideal populations for each district in Florida will be:

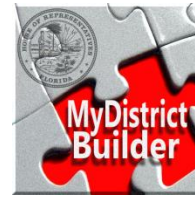
Congressional 696,345	State Senate 470,033	State House 156,678
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Permissible Deviations



- ❑ There are two different Federal constitutional standards for deviation employed for analysis of congressional districts and state legislative districts.
- ❑ Congressional: Article I, Section 2 of the U.S. Constitution
 - ❑ Mathematical equality; + or – one (1) person from the ideal population
- ❑ State Legislative: Equal Protection Clause of the 14th Amendment of the U.S. Constitution
 - ❑ Courts have accepted up to 10% total deviation from the ideal population; safe route is still the closer to mathematical equality the better

Deviations 10 Years Ago

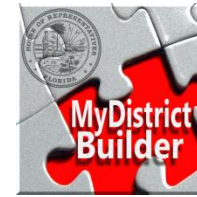


Florida House = 2.79%
Ranked 13th of 49 states

Florida Senate = 0.03%
Ranked 3rd of 50 states

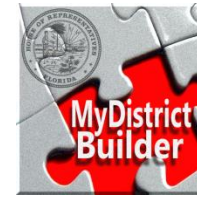
Florida's 25 seats in Congress = 0.00%
Maximum difference of 1 Person

Section 2 of the VRA



- ❑ Section 2 of the Voting Rights Act (VRA) prohibits any practice or procedure, including certain redistricting practices, which impair the ability of a minority community to elect candidates of choice on an equal basis with non-minority voters.
- ❑ In order for there to be a potential claim under Section 2 of the Voting Rights Act, three threshold factors which were developed in the U.S. Supreme Court case of *Thornburg v. Gingles* must be present.

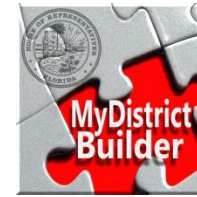
Gingles Factors



1. Minority population sufficiently large and geographically compact so as to constitute a majority in a single member district.
2. Minority group is politically cohesive.
3. There is evidence of racial-bloc voting that defeats the opportunity of minority voters to elect candidates of choice.

If those three pre-conditions are met, the decision is subject to a secondary analysis known as the “totality of circumstances” analysis.

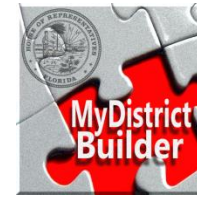
Bartlett v. Strickland



- ❑ Section 2 of the Voting Rights Act can only mandate the creation of a minority district where the voting age population (VAP) can be greater than 50 percent of the district's total VAP.
 - ❑ Term: “majority-minority district”

- ❑ Although, the U.S. Supreme Court did note that “States that wish to draw crossover districts are free to do so **where no other prohibition exists.**”
 - ❑ Term: “crossover district”

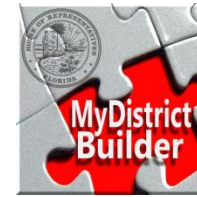
Section 5 of the VRA



- ❑ Sections 2 and Section 5 of the Voting Rights Act entail a different process of analysis.

- ❑ **Preclearance**: Under Section 5, “covered jurisdictions” are required to submit any proposed change to their practices or procedures affecting voting, including any changes to redistricting procedures or election districts resulting from redistricting, for approval by either:
 - ❑ The Attorney General of the United States; or
 - ❑ The Federal District Court of the District of Columbia, prior to implementation.

Preclearance Counties in Florida



- In Florida, the covered jurisdictions under Section 5 of the Voting Rights Act are:
 - Collier County
 - Hardee County
 - Hendry County
 - Hillsborough County
 - Monroe County

- Retrogression Analysis**: The covered jurisdiction bears the burden of demonstrating that the proposed voting change “does not have the purpose, and will not have the effect, of denying or abridging the right to vote on account of race or color or membership in a language minority group.”