To: Jonathan Cervas, Ph.D. & Bernard Grofman, Ph.D.

From: Scott Matsuda

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Case Briefing **[FLORIDA]**

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| **Citation** | * *League of Women Voters of Fla. V. Detzner*, 172 So. 3d 363 (Fla. 2015). |
| **Judicial Breakdown / Partisan or Nonpartisan** | * Justice Pariente (D) issued the 5-2 opinion, in which Chief Justice Labarga (R), and Justices Quince (D) and Perry (R), concurred; Justice Lewis (D) concurred in the result.   + Justice Canady (R) dissented with an opinion, in which Justice Polston (R) concurred.[[1]](#footnote-1) |
| **Procedural History** | * After the adoption of the Legislature's 2012 congressional redistricting plan, two separate groups of plaintiffs filed civil complaints, challenging the validity of the plan under new state constitutional redistricting standards approved by the Florida voters in 2010 and now enumerated in article III, section 20, of the Florida Constitution.   + Challengers argued that the Legislature cooperated and collaborated with partisan political operatives aligned with the Republican Party to produce a redistricting plan that was drawn in contravention of article III, section 20, with the intent to favor incumbents and the Republican Party, which was the controlling political party in the Legislature at the time of the 2012 redistricting. * After reviewing the evidence, the trial court found that the Legislature's 2012 congressional redistricting plan was indeed drawn in violation of the Florida Constitution's prohibition on partisan intent.   + However, despite its finding of unconstitutional partisan intent, the trial court invalidated only Districts 5 and 10, rejecting challenges to seven other individual districts.   + The trial court determined that there was no "distinction" between a challenge to the plan as a whole and a challenge to specific districts, and therefore "focused on those portions of the map" that it found to be "in need of corrective action in order to bring the entire plan into compliance with the constitution."     - The trial court applied a deferential standard of review in analyzing each challenged district, "deferring to the Legislature's decision to draw a district in a certain way, so long as that decision does not violate the constitutional requirements."   + As a remedy, the challengers urged the trial court to adopt one of their remedial plans, draw its own remedial plan, or hire an independent expert to draw a remedial plan.     - After a hearing, the trial court declined the challengers' suggestions and determined that the Legislature should redraw the plan. * The Legislature held a special session in August 2014 to enact a remedial redistricting plan. * The trial court approved the Legislature's remedial redistricting plan and ordered the then-impending 2014 elections to proceed under the unconstitutional 2012 plan due to time constraints, with the remedial plan to take effect for the 2016 elections. * On appeal, the challengers sought affirmance of the trial court's finding of unconstitutional partisan intent in drawing the state's congressional districts.   + Their primary contention of error was that the trial court applied an unduly deferential standard of review, thereby precluding it from imposing a more meaningful remedy for its finding of unconstitutional intent to favor the Republican Party and incumbents. * The Legislature (respondents), while seeking affirmance of the trial court's approval of the remedial redistricting plan, took issue with the trial court's finding of unconstitutional intent, specifically:   + (1) the trial court's finding of a connection between the evidence and the Legislature itself, including the decision to ascribe the intent of a few individuals to the Legislature as a collective body; and   + (2) even assuming the existence of unconstitutional intent, the trial court's finding pertained solely to the two invalidated districts and not to the broader process or map as a whole, therefore, any remedy necessary had already been provided through the enactment of the remedial redistricting plan. |
| **Disposition** | * Affirmed the trial court's finding that the Legislature's enacted map was "taint[ed]" by unconstitutional intent; however, reversed the trial court's order upholding the Legislature's remedial redistricting plan.   + Case relinquished to the trial court for a period of 100 days from the date of this opinion, with directions that it require the Legislature to redraw, on an expedited basis, Congressional Districts 5, 13, 14, 21, 22, 25, 26, 27, and all other districts affected by the redrawing, pursuant to the guidelines set forth in this opinion. |
| **Facts** | * The Fair Districts Amendment, added to the Florida Constitution in 2010, sought to eliminate the age-old practice of partisan political gerrymandering.   + Fla. citizens declared that the Legislature must "redistrict in a manner that prohibits favoritism or discrimination." *Apportionment I*, 83 So. 3d. at 632.   + The Fair Districts Amendment was designed "to restore 'the core principle of republican government,' namely, 'that the voters should choose their representatives, not the other way around.'"   + Based on the new constitutional standards that applied for the first time to the 2012 process, transparency became legally significant under the Florida Constitution.     - “[I]f evidence exists to demonstrate that there was an entirely different, separate process that was undertaken contrary to the transparent effort in an attempt to favor a political party or an incumbent in violation of the Florida Constitution, clearly that would be important evidence in support of the claim that the Legislature thwarted the constitutional mandate." *Apportionment IV*, 132 So. 3d. at 149. * A month after the Florida voters approved the Fair Districts Amendment during 11/2010 general election, then-Speaker of the House Dean Cannon authorized a meeting in December 2010 at the headquarters of the Republican Party of Florida, involving Republican political consultants and legislative staffers, to discuss the upcoming redistricting process.   + At a second meeting the following month, in January 2011, the consultants met with Senator Gaetz, Representative Weatherford, Alex Kelly, and Kelly's Senate counterpart, John Guthrie.   + These meetings were not open to the public and there is no record of what was discussed. * In 2/2012, "the Florida Legislature approved the decennial plan apportioning Florida's twenty-seven congressional districts, based on population data derived from the 2010 United States Census." * Even though the Republican consultants supposedly had no "seat at the table," they continued to be involved in the process.[[2]](#footnote-2)   + After receiving maps from Cannon staffer Pepper, Reichelderfer modified maps to increase the Republican performance of districts, and he and the other consultants traded numerous maps back and forth with each other.     - Of significance, the trial court found that some of Reichelderfer's modifications corresponded to the actual decisions the Legislature ultimately made.   + The consultants also had no need to publicly participate in order to influence the Legislature's redistricting plan—throughout the process, Reichelderfer was in direct contact with Speaker Cannon.   + Communications among the consultants also revealed particular emphasis on certain areas of the map and districts.   + And, many final revisions that affected numerous districts in some way—such as the decision to push the Black Voting Age Population (BVAP) of District 5 over 50%, add an appendage to District 10, split Homestead, and increase the Hispanic Voting Age Population (HVAP) of Districts 9 and 14—were made in a non-public meeting that occurred after the House and Senate had each passed their versions of the congressional map. |
| **Issue(s) or**  **Question(s)**  **Presented** | * Whether the trial court gave the appropriate legal effect to its finding that the Florida Legislature drew the state's congressional districts in violation of the Florida Constitution. |
| **The Rule(s)** | * Fla.’s Fair District Amendment, Fla. Const. art. III, § 20(a).[[3]](#footnote-3)   + Forbids the Florida Legislature from drawing a redistricting plan or an individual district with the "intent to favor or disfavor a political party or an incumbent."   + With "fairness" as its "focus," the Fair Districts Amendment "expressly prohibits" redistricting "practices that had been acceptable in the past, such as crafting a plan or district with the intent to favor a political party or an incumbent."   + “There is no acceptable level of improper intent." *Apportionment I*.     - The prohibition on improper partisan intent in redistricting applies, "by its express terms," to "both the apportionment plan as a whole and to each district individually" and does not "require a showing of malevolent or evil purpose."     - Importantly, however, "Florida's constitutional provision prohibits intent, not effect," which is to say that a map that has the effect or result of favoring one political party over another is not per se unconstitutional in the absence of improper intent.       * The relevant inquiry for discerning improper partisan intent "focuses on whether the plan or district was drawn with this purpose in mind." |
| **Holding(s)** | * Court held that, although the trial court properly found that the 2012 "redistricting process" and the "resulting map" apportioning Florida's twenty-seven congressional districts were "taint[ed]" by unconstitutional intent to favor the Republican Party and incumbent lawmakers, the trial court failed to give proper legal effect to its determination that the Fair Districts Amendment was violated.   + (1) The trial court erred in determining that there was no distinction between a challenge to the "plan as a whole" and a challenge to individual districts; and   + (2) the trial court erred in the standard of review it applied, which was improperly deferential to the Legislature's decisions after finding a violation of the Fair Districts Amendment's prohibition on partisan intent.     - The trial court analyzed the Legislature's map as if it had not found the existence of unconstitutional intent, affording deference to the Legislature where no deference was due.     - Once a direct violation of the Florida Constitution's prohibition on partisan intent in redistricting was found, the burden should have shifted to the Legislature to justify its decisions in drawing the congressional district lines. |
| **Rationale** | * **The "Intent" Inquiry**   + Following this Court's precedent, which "emphasize[s] that this case is wholly unlike the traditional lawsuit challenging a statutory enactment," the trial court framed the "intent" inquiry as determining "the motive in drawing" the districts.     - We agree that this was the correct approach.     - Under this framework, the trial court appropriately concluded that "the actions and statements of legislators and staff, especially those directly involved in the map drawing process[,] would be relevant on the issue of intent." [i.e., no legislative privilege.]     - Case law supports the trial court's conclusion that the intent of individual legislators and legislative staff members involved in the drawing of the redistricting plan is relevant in evaluating legislative intent. * **The Legal Sufficiency of the Trial Court's Finding of Unconstitutional Intent**   + At the threshold, the court’s review of the trial court's finding takes place against the backdrop that the Legislature "systematically deleted almost all of their e-mails and other documentation relating to redistricting."     - The Legislature did so despite knowledge that litigation over the constitutionality of its redistricting plan was inevitable.     - The Legislature saved virtually no communications among legislators and staff and none of the communications—which, as a result of this case, we now know to have occurred involving the outside political consultants.     - Even in the absence of a legal duty, the spoliation of evidence results in an adverse inference against the party that discarded or destroyed the evidence—the trial court was, therefore, justified in drawing an adverse inference against the Legislature in adjudicating the challengers' claim of unconstitutional partisan intent.   + Collectively, the evidence that the challengers were able to uncover after a protracted discovery process demonstrates a different scenario than the entirely open and transparent process touted by the Legislature when this Court considered the original apportionment challenges to the state Senate and House maps in *Apportionment I*, specifically:     - the Legislature's destruction of "almost all" emails and "other documentation relating to redistricting";     - early meetings between legislative leaders and staff with political consultants regarding the "redistricting process"; and     - the "continued involvement" of political consultants in the "redistricting process."   + While the trial court did find the professional staff to be "credible" and not to have been "part of the conspiracy," the trial court immediately dismissed the Legislature's argument about the effect of the staff having been insulated from the improper intent . . . by stating that the "political operatives managed to find other avenues, other ways to infiltrate and influence the Legislature, to obtain the necessary cooperation and collaboration" to "taint the redistricting process and the resulting map with improper partisan intent."   + There is also no doubt that the trial court's finding of unconstitutional intent pertained to the "process" of redistricting and the "enacted map" as a whole rather than solely to the two specifically invalidated districts as the Legislature contends.     - None of the evidence relied upon by the trial court was district-specific. * **Trial Court’s First Legal Error: Failing to Properly Analyze the Challenge to the Plan “As a Whole.”**   + Trial court erred in its determination that there was no distinction between a challenge to the redistricting plan "as a whole" and a challenge to individual districts.     - This error led to the trial court's failure to give any independent legal significance to its finding of unconstitutional intent when examining the challenges to individual districts (trial court stated, “What would be the point [in redrawing the entire map] if the other districts are otherwise in compliance?”).   + The trial court's decision to invalidate Districts 5 and 10 were improperly based solely on blatant tier-two violations (i.e., compactness and utilization of political and geographical boundaries where feasible, etc.), instead of finding that the whole plan was unconstitutional because of improper intent in the whole plan. * **Trial Court’s Second Legal Error: Applying a Deferential Standard of Review.**   + Once the trial court found unconstitutional intent, there was no longer any basis to apply a deferential standard of review; instead, the trial court should have shifted the burden to the Legislature to justify its decisions in drawing the congressional district lines.     - The trial court erred when it began its inquiry by asking whether there was any tier-two violation, and only then considering the direct and circumstantial evidence of tier-one improper intent as "additional evidence" to "strengthen or weaken" an "inference of improper intent" that was identifiable from tier-two deficiencies.       * The trial court did so despite finding that the direct and circumstantial evidence itself had established a violation of the tier-one constitutional standards.         + The evidence of improper intent in this case, unlike in *Apportionment I*, involved direct and circumstantial evidence of tier-one violations of the constitutional intent standard—in *Apportionment I*, the court relied on tier-two violations because it lacked a factually-intensive record with which to determine improper intent in the first instance. * **The Court’s Decision on the Legal Effect of Finding Unconstitutional Intent.**   + Rather than foster additional delay and risk another election under unconstitutional districts, we have all the record evidence necessary to evaluate now whether the Legislature's justifications can withstand legal scrutiny.   + District 5: concluded that, because the trial court found that District 5 was a key component of the Legislature's unconstitutional intent in the drawing of the congressional redistricting plan, the trial court erred in conducting only a cursory review of the remedial district and deferring to the Legislature's North-South configuration on the basis of unstated "non-partisan policy reasons."     - Since the Legislature cannot prove that the North-South configuration is necessary to avoid diminishing the ability of black voters to elect a candidate of their choice, we hold that District 5 must be redrawn in an East-West manner.   + Districts 13 & 14: concluded that the trial court erred in rejecting the challenge to these districts, and they must be redrawn to avoid crossing Tampa Bay.   + Districts 26 & 27: concluded that the trial court erred in rejecting the challenge to these districts, and they must be redrawn to avoid splitting Homestead.   + District 25: concluded that the district must be redrawn to avoid splitting Hendry County.   + Districts 21 & 22: left it for the Legislature to determine how to redraw these two districts. |
| **Dissenting: Canady, J., joined by Polston, J.** | * The circuit court properly ruled that the appellants failed to establish any basis for requiring the Legislature to further revise Florida's congressional district map.   + The majority's decision to reverse the circuit court and to invalidate numerous districts in the remedial congressional district plan adopted by the Legislature involves an extreme distortion of the appellate process deployed to effect a serious violation of the separation of powers. * There was no finding whatsoever that the Legislature acted with improper intent regarding the entire congressional plan or that the "whole plan" challenge had been proven.   + The majority puts forth a misconstruction of the trial court's ruling based on fragments from the final judgment taken out of context and creatively cobbled together.     - The upshot is a virtually revolutionary deformation of the appellate process.   + While the consultants "managed to taint the redistricting process and the resulting map with improper partisan intent,” the consultants' conspiracy was not successful in affecting the entire map drawing process.     - The trial court determined that "the staff members who did the bulk of the actual map drawing for the Legislature . . . were not a part of the conspiracy, nor directly aware of it, and that significant efforts were made by them and their bosses to insulate them from direct partisan influence."   + With respect to two districts, the trial court found that the districts were drawn with unconstitutional intent; with respect to the other districts, the trial court found that the appellants had failed to establish that the districts were drawn with unconstitutional intent. * Under the majority's application of the presumption of unconstitutionality, an alternative suggested by the challengers is virtually guaranteed to trump any choice made by the Legislature.   + This vividly illustrates just how far the majority has gone in repudiating the principle that a redistricting plan should not be declared unconstitutional "unless it clearly appears beyond all reasonable doubt that, under any rational view that may be taken of the [plan], it is in positive conflict with some identified or designated provision of constitutional law." * With the invalidation of Remedial District 5 and other challenged districts, the ironic result is that districts drawn by professional committee staff, who were insulated from partisan influence in the drawing of the districts, are effectively displaced by districts drawn . . . under the auspices of the National Democratic Redistricting Trust in cooperation with the Democratic Congressional Campaign Committee. * By imposing its own judgment about the factual inferences to be drawn from the evidence at trial, the majority has transgressed the boundaries of proper appellate review and invaded the province of the trier of fact.   + Having invaded the province of the trier of fact to find the factual basis for triggering the newly created presumption of unconstitutionality, the majority continues its march to dominate the redistricting process and finishes the job—at least for now—by making the factual determinations that the Legislature did not prove a lack of improper intent in the drawing of the specifically challenged districts.     - Marching forward, the majority eviscerates numerous factual determinations made by the trial court in its evaluation of the individual district challenges.   + The majority caps off its abandonment of the restraints of the appellate process by retaining jurisdiction after deciding this case, dictating the details of the proceedings in the trial court, and presuming to require that all filings submitted in the trial court shall "simultaneously be submitted to this court." * The damage done by this decision to the structure of the appellate process is exceeded only by the damage done to the constitutional separation of powers. Injury to the separation of powers in this case takes two forms.   + First, the majority effectively supplants the substantive constitutional power of the Legislature to draw congressional districts.   + Second, the majority invades the internal workings of the Legislature by effectively dictating how the Legislature must conduct its business in connection with the adoption of the revised congressional redistricting plan that the majority has mandated. |
| **Notes/**  **Reactions** | * N/a. |

1. The political party designations of the judges were obtained via Google desktop searches, which may not be entirely accurate. [↑](#footnote-ref-1)
2. According to plaintiffs, the Republican strategy was to present to the public a redistricting process that was transparent and open to the public, and free from partisan influences, but to hide from the public another secretive process. In this secretive process, the political consultants would make suggestions and submit their own partisan maps to the Legislature through that public process, but conceal their actions by using proxies, third persons who would be viewed as "concerned citizens," to speak at public forums from scripts written by the consultants and to submit proposed maps in their names to the Legislature, which were drawn by the consultants. [↑](#footnote-ref-2)
3. “In establishing congressional district boundaries: (a) No apportionment plan or individual district shall be drawn with the intent to favor or disfavor a political party or an incumbent; and districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice; and districts shall consist of contiguous territory. (b) Unless compliance with the standards in this subsection conflicts with the standards in subsection (a) or with federal law, districts shall be as nearly equal in population as is practicable; districts shall be compact; and districts shall, where feasible, utilize existing political and geographical boundaries. (c) The order in which the standards within subsections (a) and (b) of this section are set forth shall not be read to establish any priority of one standard over the other within that subsection.” Fla. Const. art. III, § 20. [↑](#footnote-ref-3)