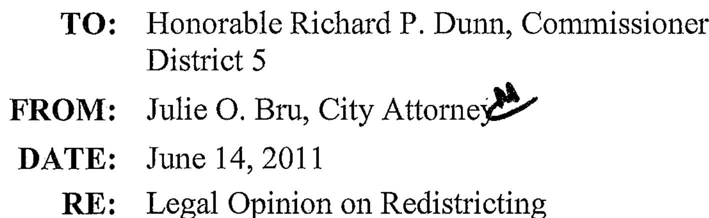
CITY OF MIAMI
OFFICE OF THE CITY ATTORNEY
LEGAL OPINION – 11-001

TO: Honorable Richard P. Dunn, Commissioner
District 5

FROM: Julie O. Bru, City Attorney



DATE: June 14, 2011

RE: Legal Opinion on Redistricting

You have requested a legal opinion on the following:

I. **FLORIDA LAW REQUIREMENTS: REDISTRICTING IN 2010**
II. **FLORIDA LAW REQUIREMENTS: PRECINCTS**
III. **LEGAL STANDARDS APPLICABLE TO REDISTRICTING PLANS**
IV. **THE VOTING RIGHTS ACT PRECLEARANCE PROCESS**
V. **PRACTICAL SUGGESTIONS AND POSSIBLE TIMETABLE FOR REDISTRICTING**

SUMMARY

In accordance with the Florida Constitution, the Legislature must redraw the State's Congressional and Legislative boundaries in the second year following the United States Census. As such, the State will hold regular session early[1] beginning January 10, 2012, along with a special redistricting session to be held from March through June of 2012. The deadline for completing redistricting is indeterminate.[2] Despite the seemingly indefinite timeline for redistricting, a plan must be enacted and approved prior to the dates for set prospective candidates to qualify for federal or state office.[3] As there are only three states, Florida, Michigan and North Carolina, who implement legislative redistricting by an act of the legislature alone, the governor has no power to veto redistricting bills or a redistricting plan. As such, if the Legislature fails to timely enact a valid redistricting plan, the Florida Supreme Court will redistrict. Regardless of how the redistricting process is completed, the Florida Supreme Court is the governing body that must review and approve all legislative plans before they become effective.

The City of Miami has ethnic and cultural communities considered "protected classes" under the Voting Rights Act. Strict redistricting compliance and careful consideration to avoid dilution of minority voters must therefore be top considerations of the City's redistricting

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[1] Fla. Const. Art. III, §3(b)
[2] Fla. Const. Art. III, §16
[3] Fla. Stat. §99.06(1) and (9); June 18-22, 2012

process. In accordance with case law, and as detailed with specificity below, the Commission should be guided by the following principles:

1. Each district must achieve a substantial equality of population[4] in accordance with and within allowable deviations.[5]
2. The City must not engage in racial gerrymandering when redrawing districts.[6]
3. The new Commission districts must not dilute the votes of minority communities.

As the State will be conducting redistricting in 2012, it is the recommendation of this office to conduct redistricting at the City level in conjunction with the tentative State timeline, while simultaneously accounting for the deadline for design submission at the State level. Because Florida, and more specifically Dade County, will be receiving a new Congressional seat and new boundaries will be drawn related thereto, it is in the best interest of the City to wait until the State has completed, at a minimum, the first round of redistricting plans. The City must, when reviewing the Budget, also account for outside expert legal service costs, expert Census and geographical data analysts and boundary-map design and printing costs.

I. FLORIDA LAW REQUIREMENTS: REDISTRICTING IN 2010

A. State Constitutional Provisions that govern redistricting in 2010

The Florida Constitution under Article III, § 16, requires the reapportionment of the State's legislative districts, by a joint resolution of the Legislature, at its regular session in the second year following the United States Census. Pursuant to Article III, § 16, there must be at least thirty (30), but no more than forty (40) senatorial districts, and at least eighty (80), but no more than one hundred twenty (120) representative districts. Both senatorial and representative districts must be of contiguous, overlapping or identical territory.

The standards for establishing congressional district boundaries, Article III, § 20, and legislative district boundaries, Article III, § 21, sets forth:

1. Congressional and Legislative district Boundaries
    a. State must not engage in political gerrymandering.
    b. Districts must provide an equal opportunity for racial or language minorities to participate in the political process.
    c. Districts must provide an equal opportunity for racial or language minorities to elect representatives of their choice.
    d. Districts must consist of contiguous territory.
    e. Each District must be as nearly equal in population as is practicable
    f. Districts must be compact.
    g. Districts must utilize existing political and geographical boundaries.

[4] *Reynolds v. Sims*, 377 U.S. 533 (1964)
[5] *Id.* The City would be constitutionally mandated to rebalance the population of districts unless the discrepancy can be justified by some "rational state policy".
[6] *Shaw v. Reno(Shaw I)*, 509 U.S. 630 (1993)

B. <u>State Statutory Provisions that govern redistricting in 2010</u>

Congressional and legislative districts are governed by Florida Statutes, Chapter 8 and Chapter 10 respectively. Additionally, counties are governed by Florida Statutes, Chapter 124 and municipalities similarly by Florida Statutes, Chapter 165.

1. <u>Congressional districts</u>
    a. Must be divided into consecutively numbered areas:
        i. As of the 2000 U.S. Census, Florida held twenty-five (25) congressional seats.
        ii. As of the 2010 U.S. Census, Florida gained two (2) congressional seats, for a total of twenty-seven (27), requiring the drawing of two (2) new districts.
    b. Must be single member congressional districts.
    c. Must have contiguous territory.

2. <u>State Legislative districts</u>
    a. Florida Statutes, Chapter 10 sets forth the standards for apportioning the House of Representative districts:
        i. The State is divided into one-hundred twenty (120) consecutively numbered representative districts.
        ii. Must be single member representative districts.
        iii. Must have contiguous territory.

    b. Florida Statutes, Chapter 10 sets forth the standards for apportioning the Senate districts:
        i. The State is divided into forty (40) consecutively numbered senate districts.
        ii. Must be single member representative districts.
        iii. Must have contiguous territory.

3. <u>Miami-Dade County districts</u>
    a. The County is divided into thirteen (13) districts.
    b. Must be single member county commission districts.

4. <u>City of Miami districts</u>

Pursuant to City of Miami, Code, §4, the form of government of the City of Miami, Florida, is known as the "mayor-city commissioner plan" and consists of the following:

- a. Mayor.
- b. Five (5) City districts with one (1) commissioner elected from each district.

II. FLORIDA LAW REQUIREMENTS: PRECINCTS

Florida Statutes, Chapter 101, §101.001, Precincts and Polling Places; Boundaries.

A. Upon the recommendation and approval of the election supervisor, the board of county commissioner creates or revises precincts.
B. Precincts shall be numbered.
C. Precincts shall, in as nearly as practicable, be composed of contiguous and compact areas.
D. The supervisor shall designate a polling place at a suitable location within each precinct.
E. Precincts may, with the recommendation and approval of the county commissioners, be combined with other adjoining precincts when there are less than twenty-five (25) registered electors of the only political party with candidates on the ballot.
F. Precincts must be bounded on all sides by:
    1. Census block boundaries from the most recent U.S. Census Bureau.
    2. Governmental unit boundaries from the most recent Boundary and Annexation Survey published by the U.S. Census Bureau.
    3. Visible features that are readily distinguishable, such as streets, railroads, tracks, streams, and lakes (must be indicated on current census maps, official Department of Transportation maps, official municipal maps, official county maps, or a combination of such maps.).
    4. Boundaries of public parks, public school grounds, or churches.
    5. Boundaries of counties, incorporated municipalities, or other political subdivisions that meet criteria established by the U.S. Census Bureau for block boundaries.
G. The supervisor and the board of county commissioners can conform precinct boundaries with municipal boundaries.
H. Each supervisor of elections shall maintain a suitable map drawn to scale no smaller than 3 miles to the inch and clearly delineating all major observable features, showing the current geographical boundaries of each precinct, representative district, and senatorial district and other type of district in the county subject to the elections process in this code.
I. Precincts must remain as designated, unless a change is approved by the supervisor and a majority of the members of the board of county commissioners.
J. The Secretary of State must be notified in writing within thirty (30) days, by the supervisor of elections, of any reorganization of precincts and must be presented with a map showing the current geographical boundaries and designation of each new precinct.
K. Within ten (10) days after there is any chance in the division, number, or boundaries of the precincts, or the location of the polling places, the supervisor of elections shall make in writing an accurate description of any new or altered

precincts, setting forth the boundary lines and shall identify the location of each new or altered polling place. Such document shall be posted at the supervisor's office.

1. In lieu of a map, the supervisor of elections may furnish a list, in an electronic format prescribed by the Department of State, associating each census block in the county with its precinct (limited to situations where precincts are composed of whole census blocks).

III. LEGAL STANDARDS APPLICABLE TO REDISTRICTING PLANS

The current requirement to redistrict state and local governments is derived from the 14th Amendment of the United State Constitution, which is based on the traditionally recognized principle commonly referred to as "one person, one vote".[7] This notion stemmed from the 1962 decision in *Baker v. Carr* which fundamentally changed the Court's previous venerable policy of laxity in redistricting cases.[8] In order to examine the administration of this concept we must turn to the standards surrounding equal population along with the Voting Rights Act of 1965 ("the Act").[9] Specifically, Section 2 of the Act, originally a restatement of the 15th Amendment and applied to all jurisdictions, prohibits any State, or political subdivision of the State, from imposing "voting qualifications or prerequisite[s] to voting, or standard, practice or procedure to deny or abridge the right to vote on account of race or color".[10] Conversely, Section 5 applies only to certain jurisdictions, and requires preclearance by either the U.S. Department of Justice or the U.S. District Court for the District of Columbia for any changes to electoral laws before they are able to take effect.[11]

Though history-making, the decision in *Baker v. Carr* provided for judicial review of constitutional violations regarding state legislative (and, by implication, congressional) redistricting cases but failed to provide standards by which to judge said equal protection and Act violations. Soon thereafter, established Supreme Court case law principles and factors began to emerge.[12] In *Wesberry v. Sanders*[13], resting on Article I, Section 2, of the Constitution, the Supreme Court recognized that congressional districts "... shall be apportioned among the several states ... according to their respective numbers ..."[14] In other words, congressional redistricting is strictly interpreted by Courts on the basis that districts must be as nearly equal in population as practicable.[15] Then, in 1969, the Supreme Court added that, insofar as a state fails to achieve mathematical equality among [congressional] districts, it must either show that the variances are unavoidable or specifically justify the variances.[16]

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[7] *Baker v. Carr*, 369 U.S. 186 (1962); *Gray v. Saunders*, 372 U.S. 368, 381 (1963)
[8] *E.g. Colegrove v. Green*, 328 U.S. 549 (1946) (ruling that courts should not interfere in congressional redistricting disputes)
[9] 42 U.S.C. §§ 1971 (2006)
[10] *Id.* at §2
[11] *Id.* at §5
[12] *Grey v. Sanders*, 372.U.2. 368 (1963) (determining unit voting systems as unconstitutional *per se)*
[13] *Wesberry v. Sanders*, 376 U.S. 1 (1964)
[14] U.S. Constitution, Article I, §2
[15] *See generally Wesberry v. Sanders*
[16] *Kirkpatrick v. Preisler*, 394 U.S. 526, at 530-531 (1969)

On the other hand, *Reynolds v. Sims*[17] was the benchmark case for the judiciary's development of population variance standards for redistricting on the state legislative level. Ultimately, resting on the foundation of the 14th Amendment, Courts determined that legislative districts in state and municipal governments must be apportioned on a "substantial equality of population…"[18] basis. The Warren court opinion further clarified the distinctions between the congressional and state legislative standards and stated:

> [S]ome distinctions may well be made between congressional and state legislative representation. Since, almost invariably, there is a significantly larger number of seats in state legislative bodies to be distributed within a state than congressional seats, it may be feasible to use political subdivision lines to a greater extent in establishing state legislative districts than in congressional districting while still affording adequate representations to all parts of the State.[19]

In *Gaffney v. Cummings*[20] and *White v. Regester*[21] in the 1970s the Court developed a standard of population equality that required legislative districts to differ by no more than ten percent (10%) from the smallest to the largest, unless justified by some "rational state policy". In other words, a legislative Plan will not violate the Equal Protection Clause if the difference between the smallest and largest district in the jurisdiction is less than ten percent (10%). Conversely, any plan with disparities in population over the ten percent (10%) threshold "creates a prima facie case of discrimination, and therefore must be justified by the State".[22]

The range between the largest and smallest populated district is referred to as the maximum population deviation, or overall deviation. In the event any district within the City has an overall deviation larger than ten percent (10%), the City's plan would be considered to be "malapportioned". In turn, the City would be constitutionally mandated to rebalance the population of districts unless, as stated above, the discrepancy can be justified by some "rational state policy"[23] and it does not dilute or take away the voting strength of any particular group.

Although the Supreme Court had previously acknowledged a distinction between congressional and legislative districting (strict equality[24] versus substantial equality[25] respectively), it was not until *Mahan v. Howell*[26] and *Quilter v. Voinovich*[27] that the Supreme Court upheld state legislative redistricting plans with a deviation larger than the ten percent

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[17] *Reynolds v. Sims*, 377 U.S. 533 (1964)
[18] *Id.* At 579; *see also generally Avery v. Midland County*, 390 U.S. 474 (1968)
[19] *Id.* at 578
[20] *Gaffney v. Cummings*, 412 U.S. 735 (1973)
[21] *White v. Regester,* 412 U.S. 755 (1973)
[22] *Voinovich v. Quilter*, 507 U.S. 146, at 161 (1993)
[23] *Reynolds v Sims*, 377 U.S. 533, 579 (1964)
[24] *Wesberry v. Sanders*, 376 U.S. 1 (1964)
[25] *Reynolds v. Sims*, 377 U.S. 533 (1964)
[26] *Mahan v. Howell*, 410 U.S. 315 (1973)
[27] *Quilter v. Voinovich*, 857 F. Supp 579 (N.D. Ohio 1994)

(10%) threshold and examined the basis for criteria to determine what constitutes a "rational state policy". In *Mahan* the Supreme Court upheld Virginia's state legislative redistricting plan on the basis of preserving political subdivision boundaries in the drawing of House of Delegates' districts. *Quilter* relied on *Mahan* and *Brown v. Thomson*[28] and determined that a "total deviation" of 13.81 percent (13.81%) for House districts and 10.54 percent (10.54%) for Senate districts did not violate the "one person, one vote"[29] requirement on the basis of preserving county lines and the deviation resulting from the drawings were not constitutionally excessive.[30]

> Any number of consistently applied legislative policies might justify some variance, including for instance, making districts compact, respecting municipal boundaries, preserving the cores of prior districts, and avoiding contests between incumbent Representatives...The State must, however, show with some specificity that a particular objective required the specific deviations in its plan, rather than simply relying on general assertions. The showing required to justify population deviation is flexible, depending on the size of the deviations, the importance of the State's interests, the consistency with which the plan as a whole reflects those interests, and the availability of alternatives that might substantially vindicate those interests yet approximate population equality more closely. By necessity, whether deviations are justified requires case-by-case attention to these factors.[31]

Despite the rational state policy justification for the Equal Protection Clause, it is still important to keep in mind that the overall range of less than ten percent (10%) deviation is no longer a complete safe harbor requirement. Race and reapportionment are the second and third principles also strictly scrutinized[32] in redistricting. With redistricting in the years following the Census of 1990 and 2000, the concepts of "majority-minority"[33] districts, "racial gerrymandering"[34], and "the ten percent (10%) rule"[35] also emerged as dubious mechanisms of the redistricting process.

Typically, federal courts are careful to respect a state or local government's reapportionment and redistricting decisions, unless those decisions violate the Constitution or federal law.[36] Generally, Section 2 violations of the Voting Rights Act involve cases where reapportionment and redistricting appear disproportionate with respect to minority groups typically due to the use of multimember districts,[37] packing minorities into single districts,[38] or

[28] *Brown v.* Thomson, 462 U.S. 835 (1983)
[29] *See* footnote 1 supra
[30] *Quilter v. Voinovich*, 857 F. Supp at 584, 586, and 587
[31] *Karcher v. Daggett*, 462 U.S. 725, 740-741 (1983)
[32] Strict scrutiny is the most stringent legal standard applied to the judicial review of a state act alleged to violate the Constitution. It is a very high standard that is rarely satisfied.
[33] *Pender County v. Bartlett*, 649 S.E.2d at 371 (N.C. 2007)
[34] *Shaw v. Reno(Shaw I)*, 509 U.S. 630 (1993)
[35] *See generally Voinovich v. Quilter*, 507 U.S. 146, at 161 (1993)
[36] *Voinovich v. Quilter*, 507 U.S. at 146
[37] *United States v. Marengo County Comm'n*, 731 F.2d 1546 (11th Cir. 1984) (holding that multimember districts, where the voting strength of a minority group can be lessened by placing it in a larger multimember or at-large district where the majority elect a number of its preferred candidates and the minority group cannot elect any of its

splitting minorities into several districts.[39] The Supreme Court first considered the Act in *Thornburg v. Gingles*[40] and introduced three qualifications a plaintiff must demonstrate in order to prove a Section 2 claim. Specifically, the plaintiff must prove that the minority group:

1. Is sufficiently large and geographically compact to constitute a majority in a single-member district;
2. Is politically cohesive, that is, it usually votes for the same candidates; and
3. That, in the absence of special circumstances, bloc voting by White majority usually defeats the minority's preferred candidate.[41]

Once a minority group proved the three prongs set forth in *Gingles*, then they would be entitled to prove a Section 2 violation by "the totality of the circumstances", in other words, that they had "less opportunity than other members of the electorate to participate in the electoral process and to elect representatives of their choice."[42] The decision rendered by Justice Brennan indicated that a court "must assess the impact of the contested structure or practice on minority electoral opportunities 'on the basis of objective factors:'"[43]

1. The extent of the history of official discrimination touching on the minority group participation in the democratic process;
2. Racially polarized voting;
3. The extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, antisingle-shot provisions, or other voting practices that enhance the opportunity for discrimination;
4. Denial of access to the candidate slating process for members of the class;
5. The extent to which the members of the minority group bear the effects of discrimination in areas such as education, employment and health that hinder effective participation;
6. Whether political campaigns have been characterized by racial appeals;
7. The extent to which members of the protected class have been elected;
8. Whether there is a significant lack of responsiveness by elected officials to the particular needs of the group; and

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preferred candidates, are not *per se* unconstitutional); *See also Jones v. City of Lubbock*, 727 F.2d 364 (5th Cir. 1984); *See also Ketchum v. Byrne*, 740 F.2d 1398 (7th Cir. 1984).

[38] *Voinovich v. Quilter*, 507 U.S. at 146 (packing occurs when a minority group in concentrated into one or more districts so that the group constitutes an overwhelming majority in those districts, thus minimizing the number of districts in which the minority could elect candidates of its choice).

[39] *Gingles v. Edmisten*, 590 F. Supp 345 (E.D.N.C. 1984), *aff'd in part, rev'd in part sub nom. Thornburg v Gingles,* 478 U.S. 30 (1986) (occurs when a group of minority voters is broken off from a concentration of minority voters and added to a large majority district).

[40] *Thornburg v. Gingles*, 478 U.S. 30 (1986)

[41] *Id.* at 50-51.

[42] 42 U.S.C § 1973(b) (2006).

[43] *Thornburg v. Gingles* at 44, quoting S. Rep. No. 417, 97th Cong. 2nd Sess. 27 (1982).

9. Whether the policy underlying the use of the voting qualification, standard, practice or procedure is tenuous.[44]

Post *Gingles* the analysis of Section 2 further developed. *Voinovich v. Quilter*[45] illustrated a case wherein the Supreme Court opposed a district court holding that Section 2 prohibits creation by the state of majority-minority districts absent a Section 2 violation. It further reiterated that, in keeping with the *Gingles* decision, a state is free to draw districts however it wants so long as it does not do so in violation of the U.S. Constitution or the Act; and, requiring a state to prove a violation of Section 2 unduly shifts the burden of proof from the plaintiff minority group(s) to the state.[46] In the footsteps of *Voinovich,* Florida case *Johnson v. DeGrandy*[47] directed its attention towards the "totality of the circumstances" identified in *Gingles* and expressly rejected a rule that would require a state to maximize majority-minority districts: "Failure to maximize cannot be the measure of Section 2."[48]

Certain states requiring preclearance from the Justice Department were persuaded to draw plans creating new districts where members of racial or language minority groups were a majority of the population. At first, these "majority-minority" district plans were believed to protect the State from a Section 2 violation. However, as the plans were put together pockets of minority populations led to districts that were not compact and took on peculiar forms later referred to as "racial gerrymanders".[49] This led to arguments from White voters claiming 14th Amendment equal protection violations.[50] Years later, in 2009, *Bartlett v. Strickland*[51] finally defined the meaning of "majority" in the first prong of the *Gingles* factors. The Court determined that majority-minority districts contain a numerical, working majority of voting age population and influence districts[52], where the minority can influence the outcome of an election even if its preferred candidate cannot be elected. These "crossover districts"[53] in which the minority group is not a statistical majority of the voting age population, but is sizeable enough to elect its favored candidate by convincing enough majority voters to sway their support (coined "crossover") to the minority's preferred candidate, should be reserved for districts in which more

[44] *Id.* at 36-37.
[45] *Voinovich v. Quilter*, 507 U.S. 146 (1993)
[46] *Id.*
[47] *Johnson v. DeGrandy*, 512 U.S. 997 (1994)
[48] *Id.* at 1017
[49] *Shaw v. Reno (Shaw I)*, 509 U.S. 630 (1993)
[50] *Shaw v. Reno (Shaw I)*, 509 U.S. 630 (1993); *United States v. Hays*, 515 U.S. 737 (1995); *Miller v. Johnson*, 515 U.S. 900 (1995); *Bush v. Vera*, 517 U.S. 952 (1996); *Shaw v. Hunt (Shaw II)*, 517 U.S. 899 (1996); and *Lawyer v. Dept. of Justice*, 521 U.S. 567 (1997).
[51] *Bartlett v. Strickland*, 129 S.Ct. 1231 (2009) (N.C.)
[52] *LULAC v. Perry*, 548 U.S. 399 (2006) (Section 2 protects the opportunity of minorities to elect representatives of their choice, not merely to influence elections)
[53] *See also Pender County v. Bartlett*, 649 S.E.2d at 371 (N.C. 2007) (recognized four types of minority districts: 1) "majority-minority" (where a majority of the voting age population are members of a specific minority group); 2) "coalition" districts (where a minority group joins with voters from another minority group to elect a candidate); 3) "crossover" districts (where a minority group has support from a limited but reliable white crossover vote); 4) "influence" districts (where a minority group is large enough to influence the election of candidates but too small to determine the outcome).

than one minority group can form a majority. *Strickland* cited the need for a Section 2 bright-line rule to prevent "extending racial considerations even further into the districting process".[54]

Ultimately, the Equal Protection Clause does not prohibit creating districts intentionally conscientious of the race of majority voters within the district, but it does stipulate the application of strict scrutiny[55] for districting based solely on this factor. Strict scrutiny will require legislative action to create new legislative districts if "redistricting legislation...is so extremely irregular on its face that it rationally can be viewed only as an effort to segregate the races for purposes of voting, without regard for traditional voting principles;"[56] or "race for its own sake, and not other districting principles, was the legislature's dominant and controlling rationale in drawing its district lines;"[57] or "the legislature subordinated traditional neutral districting principles...to racial considerations;"[58] or "the State has relied on race in substantial disregard of customary and traditional districting principles".[59] In order to survive strict judicial scrutiny and a Section 2 violation, the City, or any local government, can prove that either (i) a majority-minority district can be explained by race-neutral factors (race was not the predominate factor in the creation of the district); or (ii) the reasons for creating a majority-minority district are narrowly tailored to serve a compelling state interest.

IV. THE VOTING RIGHTS ACT PRECLEARANCE PROCESS

A. Preclearance Process

1. Section 5 of the Voting Rights Act requires certain states to seek federal approval from either the U.S. Attorney General or the U.S. District Court for the District of Columbia for any changes that affect the voting rights of citizens. The Attorney General, or respective Court, must find that a proposed change will not discriminate against voters.
2. States subject to preclearance: Alaska, Arizona, Texas, Louisiana, Mississippi, Alabama, Georgia and South Carolina. In addition, certain counties in California, South Dakota, **Florida**, North Carolina, New York and Virginia and certain townships in Michigan and New Hampshire.
3. Florida Counties that must obtain preclearance are: Hillsborough, Monroe, Hardee, Hendry, and Collier.

[54] *See* footnote 42 supra
[55] *See* footnote 16 supra
[56] *Shaw I*, 509 U.S., at 642
[57] *Miller* 515 U.S. at 916
[58] *Id.* at 916
[59] *Id.* at 916

V. PRACTICAL SUGGESTIONS AND POSSIBLE TIMETABLE FOR REDISTRICTING

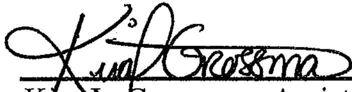
Redistricting suggestions:

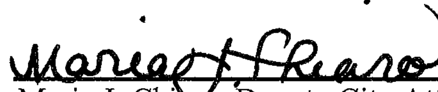
1. Compact districts;
2. Contiguity amongst districts;
3. Preservation of precinct voting sites;
4. Preservation of communities of interest;
5. Preservation of cores of prior districts;
6. Compliance with Section 2 of the Act and Equal Population Clause of the 14th Amendment.

Please see attached exhibits "A" and "B" for timetables.

It is recommended to reach out to the Miami-Dade County Attorney's Office as many city districts will be impacted by the county redistricting measures. Joint efforts from the onset, instead of post design, could prove to be very beneficial and efficient for both the City and the County. In turn, it may potentially allow for reduced expenditures in costs associated with the redistricting process.

PREPARED BY: REVIEWED BY:


Kira L. Grossman, Assistant City Attorney


Maria J. Chiaro, Deputy City Attorney

cc: Honorable Mayor and Members of the City Commission
Tony E. Crapp Jr., City Manager
Priscilla Thompson, City Clerk

EXHIBIT A

FLORIDA'S TENTATIVE TIMELINE

March 2011 - Census publishes more detailed population counts for counties and cities.

April 1, 2011 - U.S. Census Bureau's delivery of redistricting date to Florida must be completed.

June 2011 - First version of redistricting map goes online.

July - October 2011 - Statewide public hearings on proposed maps.

December 2011 - Second version of redistricting maps online

January 2012 - Legislature holds annual session early to have enough time to produce redistricting map.

Legislative (State House and Senate) Redistricting Plans	Congressional Redistricting Plan
Between January 10 to March 9 – Legislature approves Legislative Plans	Between January 10 to March 9 – Legislature approves Congressional Plans
15 Days – Attorney General submits Legislative plans to Florida Supreme Court	7 or 15 days – Governor signs Congressional plan into law
30 Days – Florida Supreme Court upholds the Legislative plans	NO AUTOMATIC COURT REVIEW
60 Days – US DOJ preclears the Legislative Plans	60 days – US DOJ preclears the Congressional Plan
June 18-22 – Qualifying for state and federal elections in Florida	June 18-22 – Qualifying for state and federal elections in Florida

August 28, 2012 - Florida Primary elections

November 6, 2012 - Election Day

EXHIBIT B

CITY'S PROPOSED TIMELINE

June-July 2011 - Obtain Census data; obtain cost of experts and schedule budget approval for their agreements; hire experts for calculation of deviations and map drawings. Schedule meetings with County Attorneys.

August 2011 - Review State redistricting map and release first version of City redistricting map.

August-October 2011 - Citywide public hearings on proposed maps.

December 2011 - Obtain second version of State redistricting map.

February 2012 - Second version of City redistricting maps released.

March 2012 - Resolution presented to the Commission for direction to administration to proffer new maps to County supervisor of elections.

August 28, 2012 - Florida Primary elections.

November 6, 2012 - Election Day.

EXHIBIT C

CASE LAW OVERVIEW[60]

Major Cases About Section 2 of the Voting Rights Act

Gomillion v. Lightfoot, 364 U.S. 339 (1960) (Ala.)

The Supreme Court invalidated a district that excluded Black voters, saying it violated the 15th Amendment, which prohibits denial or abridgement of right to vote on basis of race. This case was decided before the Voting Rights Act became law in 1965.

White v. Regester, 412 U.S. 755 (1973) (Texas)

The Supreme Court said that, under the Equal Protection Clause of the 14th Amendment, a state was justified in deviating from equal population of districts to remedy the history that the Black and Mexican-American communities had been "effectively excluded from participation in the Democratic primary selection process".

City of Mobile v. Bolden, 446 U.S. 55 (1980) (Ala.)

The Supreme Court ruled that to show a violation of the 15th Amendment requires showing not just a discriminatory effect, but also a discriminatory purpose. The Court noted that the 15th Amendment had equivalent language to Section 2 of the Voting Rights Act. The case spurred Congress in 1982 to amend Section 2 of the Voting Rights Act to declare that discriminatory effects would suffice for a Section 2 claim, and that discriminatory intent need not be proven.

Thornburg v. Gingles, 474 U.S. 808 (1986) (N.C.)

The Supreme Court interpreted the new language of Section 2 concerning discriminatory effects. The Court enunciated when Section 2 requires the breakup of multi-member districts into minority single-member districts. It is a determination based on the totality of circumstances that the minority group has unequal access to the political process and to the ability to elect representatives of its choice. But there are three preconditions:

1. That the minority group is sufficiently large and compact that it can be drawn as a majority of a single-member district;
2. That the minority group is politically cohesive; and
3. That the majority usually votes as a bloc so as to defeat the minority's choices for representative.

Growe v. Emison, 507 U.S. 25 (1993) (Minn.)

The Supreme Court held that the *Gingles* requirements for breakup of a multi-member district apply as well to a Section 2 claim against a single-member district.

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[60] National Conference of State Legislatures, Redistricting Law, Table 7 (2010).

Voinovich v. Quilter, 507 U.S. 146 (1993) (Ohio)

The Supreme Court said a state is free to draw majority-minority districts, if doing so does not otherwise violate the law. A minority district does not have to be necessary to remedy Section 2 violations.

Johnson v. DeGrandy, 512 U.S. 997 (1994) (Fla.)

The Supreme Court upheld a plan where minority voters had formed effective voting majorities in a number of districts roughly proportional to the minority voters' respective shares in the voting age population, even though more minority districts could have been drawn. The Court said Section 2 did not require maximization of minority districts. However, the Court issued caveats about the role of proportional representation: Proportionality is not an affirmative defense to a Section 2 claim, which needs to be pled; and proportionality does not always defeat a claim of vote dilution.

League of United Latin American Citizens (LULAC) v. Perry, No. 05-204, 548 U.S. 399 (2006) (Texas)

The Supreme Court said "influence districts" are not protected by Section 2. It said that, for the Hispanic minority in the case before the court, citizen voting age population was the proper measure for a district under Section 2. The Court also said the compactness precondition of *Gingles* refers not just to geographical compactness of the district, but also to compactness of the minority group.

Bartlett v. Strickland, No. 07-689, 129 S.Ct. 1231 (2009) (N.C.)

The Supreme Court ruled that the compactness precondition of *Gingles* requires that the minority group must be drawable into a numerical majority—more than 50 percent of voting age population—in the district. Section 2 does not mandate the drawing of "crossover" districts, in which the minority can elect its preferred candidate with the help of some White voters. The Court did not discuss the question of citizenship in the context of an African American minority.

Major Cases About Racial Gerrymandering

Shaw v. Reno, 509 U.S. 630 (1993) (N.C.)
The Supreme Court recognized a right to participate in a color-blind electoral process and a new claim of "racial gerrymandering". The Court said it is a legitimate Equal Protection claim to assert that a district is so extremely irregular on its face that it could rationally be viewed only as an effort to segregate races for purposes of voting, without regard to traditional districting principles and without sufficiently compelling justification.

United States v. Hays, 515 U.S. 737 (1995) (La.)
The Supreme Court said standing equals injury in fact, causal connection, and likely redress by the remedy sought. For a racial gerrymandering claim against a district, those criteria can be met only by a resident in the district.

Miller v. Johnson, 515 U.S. 900 (1995) (Ga.)
The Supreme Court said that, even absent a bizarrely shaped district, an allegation that race was the Legislature's dominant and controlling rationale in drawing district lines was sufficient to state a racial gerrymandering claim.

Bush v. Vera, 517 U.S. 952 (1995) (Texas)
The Supreme Court said the drawing of a district in which race was the predominant motivating factor is subject to strict scrutiny as racial gerrymandering. The district cannot be justified by Section 2 unless there is a strong basis in evidence that the district was reasonably necessary to avoid the result of denial or abridgements of equal right to vote. The district cannot be justified by Section 5 unless it was reasonably necessary to prevent retrogression. Increasing a minority percentage in a district is not justified as prevention of retrogression.

Lawyer v. U.S. Department of Justice, 521 U.S. 567 (1997) (Fla.)
The Supreme Court said a state should be given the opportunity to make its own redistricting decision so long as that is practically possible and the state chooses to take the opportunity.

Easley v. Cromartie, 532 U.S. 234 (2001) (N.C.)
The Supreme Court upheld a minority district against a racial gerrymandering claim, saying that where racial identification correlates highly with political affiliation, the plaintiff in a racial gerrymandering case must show that the Legislature could have achieved its legitimate political objectives in alternative ways that were comparably consistent with traditional districting principles and yet would have brought about significantly greater racial balance.

Major Cases About Section 5 of the Voting Rights Act

South Carolina v. Katzenbach, 383 U.S. 301 (1966) (S.C.)
The Supreme Court upheld Section 5 and certain other parts of the Voting Rights Act. It said those provisions were appropriate means for carrying out Congress' constitutional responsibilities under the 15 Amendment and were consonant with all other provisions of the Constitution.

Beer v. United States, 425 U.S. 130 (1976) (La.)
The Supreme Court announced "retrogression" as the standard for Section 5 review.

Allen v. State Board of Elections, 393 U.S. 544 (1969) (Va.)
The Supreme Court said Section 5 covers all actions necessary to make a vote effective.

Presley v. Etowah County Commission, 502 U.S. 491 (1992) (Ala.)
The Supreme Court said Section 5 does not cover transfers of decision-making power among elected officials.

Reno v. Bossier Parish (Bossier II), 528 U.S. 320 (2000) (La.)

The Supreme Court said the "intent" language of Section 5 means intent to retrogress, not any intent to discriminate. (Reversed by 2006 amendment to Section 5, which said Section 5 covers any intent to discriminate.)

Georgia v. Ashcroft, 539 U.S. 461 (2003) (Ga.)

The Supreme Court said Section 5 protects districts in which minorities have influence, and the retrogression standard can be satisfied by breaking up effective minority districts into influence districts, in considering the plan as a whole. (Reversed in part by 2006 amendment to Section 5, which said Section 5 protects the ability of minorities not merely to influence elections but to elect candidates of their choice.)

Riley v. Kennedy, No. 07-77, 128 S.Ct. 1970 (2008) (Ala.)

The Supreme Court said Section 5 does not cover change from temporary misapplication of state law, saying such a law is not in force or effect.

Northwest Austin Municipal Utility District Number One (NAMUDNO) v. Holder, No. 08-322, 557 U.S. (2009) (Texas)

Plaintiff utility district challenged the preclearance requirement of Section 5 on the ground that it exceeded Congress's enumerated constitutional powers. The Supreme Court expressed serious doubt that Section 5's current burdens were justified by current needs, but avoided the constitutional issue by permitting the utility district to escape those burdens by "bailing out" of the preclearance requirement.