

FSBA Issue Brief: Redistricting

(Amendments 5 & 6)

Amendments 5 and 6, which will appear on the 2010 General Election ballot, would amend the Florida Constitution to specify mandatory standards that the Florida Legislature must apply to the establishment of legislative and congressional district boundaries.

Background

Redistricting is the process by which seats in the U.S. House of Representatives and the Florida Legislature are redistributed following each constitutionally mandated decennial census.

For congressional redistricting, in accordance with the Fourteenth Amendment to the U.S. Constitution, each state is apportioned a number of seats which approximately corresponds to its share of the aggregate population of the 50 states. In addition, federal law and U.S. Supreme Court rulings require that congressional districts must be contiguous, compact, and equally populated. Thus, if the census shows that a portion of the state has become more or less densely populated, the state will need to adjust the congressional districts to ensure that the number of residents is roughly equal. Furthermore, if a state's population has increased, the state may gain a seat in the U.S. House of Representatives and the state will need to redesign its congressional district boundaries to accommodate that gain of a seat. It is important to note that total number of seats in the U.S. House of Representatives is capped at 435, so, if one state gains a seat, another state must lose a seat to maintain the 435 total. *(NOTE: It is likely that Florida will gain a seat in the U.S. House of Representatives as a result of the 2010 census.)*

Article III, Section 16(a) of the Florida Constitution provides that “[t]he legislature at its regular session in the second year following each decennial census, by joint resolution, shall apportion the state in accordance with the constitution of the state and of the United States into not less than thirty nor more than forty consecutively numbered senatorial districts of either contiguous, overlapping or identical territory, and into not less than eighty nor more than one hundred twenty consecutively numbered representative districts of either contiguous, overlapping or identical territory.” In accordance with federal and state laws and U.S. Supreme Court rulings, legislative districts must be substantially equal in population. Thus, if the census shows that a portion of the state has become more or less densely populated, the state will need to adjust the Florida Senate and House districts to ensure that the number of residents is roughly equal.

In addition to the provisions of the U.S. Constitution, Florida Constitution, and related federal and state laws mentioned above, another key consideration in the congressional and legislative redistricting process is the federal Voting Rights Act of 1965. This act protects the basic right to vote and enforces the protections guaranteeing that minority voters have an opportunity to participate in the electoral process and elect candidates of their choice, generally free of discrimination.

In accordance with the U.S. Constitution and U.S. Supreme Court rulings, state legislatures have the exclusive authority to create congressional and legislative districts. While several states have delegated this authority to independent commissions (either entirely or as a recommending body), 36 states, including Florida, have maintained this authority with the state legislature. In addition, each state has its own standards for creating congressional and legislative districts.

Amendments 5 & 6 require that congressional and legislative districts or districting plans may not be drawn to favor or disfavor an incumbent or political party, must be contiguous, and must not be drawn to deny racial or language minorities the equal opportunity to participate in the political process and elect representatives of their choice. In addition, unless otherwise required, districts must be compact, as equal in population as feasible, and, where feasible, must make use of existing city, county and geographical boundaries.

Concerns

Amendments 5 and 6 would help address a number of concerns about current legislative and congressional districts and the redistricting process, including:

Lack of Balance – While Florida is a politically balanced state – 42% Democrat, 36% Republican and 22% Independent/Minor Party/No Affiliation – its congressional and legislative representation is not. One major party holds almost two-thirds of the congressional and legislative seats.

Lack of Standards – Under current Florida law, standards for drawing legislative and congressional districts require little more than roughly balancing the population within each district and ensuring that the district is comprised of contiguous territory.

Lack of Competitive Races – Only a small percentage (approximately 7%) of Florida’s legislative and congressional races over the last 6 years have offered candidates from at least two major parties.

Power of Incumbency – In the last 6 years, there have been 420 elections for State Senator and State Representative, yet only three incumbents have been defeated.

Partisan Control of the Process – When one political party dominates the state legislature during redistricting, it is likely that districts will be drawn that favor that party and its incumbents.

Oddly Shaped Districts – Florida is home to some strangely designed districts, including Congressional District 11 which connects portions of Hillsborough and Pinellas via a causeway over the Tampa Bay and Florida Senate District 27 which spans 115 miles across the state, connecting Palm Beach County to Lee County.

FSBA Position

FSBA supports Amendments 5 and 6 because they provide reasonable standards for redistricting that will help ensure that voters have a fair chance to choose their representatives rather than having politicians choose their voters.