

FLORIDA STATE ASSOCIATION OF SUPERVISOR OF ELECTIONS (FSASE) 2010 MID-YEAR WINTER CONFERENCE

January 9, 2011 – January 12, 2011
Saddlebrook Resort – Tampa
Wesley Chapel, Florida

Cindy A. Laquidara, General Counsel
Office of General Counsel
City of Jacksonville, Florida

REDISTRICTING LOCAL GOVERNMENTS IN FLORIDA – 2011

- I. The Purpose of the Process.
 - A. We are trying to divide voting districts up to closely approximate 1 person 1 vote.
 - B. The basis for reapportionment is the constitutional obligation to count the populace of the United States each decennial year and apportion congressional representation.

- II. United States Supreme Court Historical Role.
 - A. High level of importance, stemming from constitutional requirement that Congressional seats be apportioned among the states.
 - B. Equal Protection and Voting Rights Issues – will be addressed below.
 - C. Awkward process:
 - a. File in federal court; almost all other cases are heard by a single federal judge.
 - b. Redistricting cases are heard by a three panel district court, which must include at least one appellate judge.
 - c. Makes its way to the U.S. Supreme Court.
 - i. Usually U.S. Supreme Court decisions are handed down, and over the next 5-10 years, various lower court decisions will be made that interpret and apply the Supreme Court decision.
 - ii. Here, because the redistricting only occurs every 10 years, the cases more lurch from one to another, with very little development by the lower courts.

III. The General Process.

- A. County Commissions – 5 to 19 members; including at large.
- B. Even population distribution, to prevent one district from having to represent 10,000 people while another represents 100,000.
 - a. Major Principle – evenly dividing up districts, no intent to affect voting composition one way or the other.
 - i. Can protect existing incumbencies, as they represent communities of interest
 - ii. Can favor one party over another;
 - iii. Cannot intentionally separate on the basis of race.
 - b. Cannot intentionally dilute minority vote.
- C. Race – separate consideration
 - a. Equal Protection principles – cannot be the subject of racial gerrymandering without more under the Constitution.
 - i. Cannot rely on the need to prevent a Section 2 violation to protect you against an Equal Protection Claim.
 - ii. You have a right not to be treated differently on the basis of your race unless it is necessary to protect your vote.

- b. Statutory Principles – Section 2 of the Voting Rights Act
 - 1. Cannot dilute power to prevent the actual exercise of voting.
 - a. Significant evidentiary constraints.
 - b. Minority group must be large and geographically compact, vote as a politically cohesive group, and the white electorate must vote as a block.
Thornburg v. Gringles, 478 U.S. 30 (1986).
 - c. Actual voting based on race, not the voting age population only.
 - d. Totality of the circumstances; history of official discrimination, overt or subtle racial appeals in elections; extent to which minority group at issue has been elected to public office.
 - 2. Must show that one group votes as a block. Usually it is the minority group, but case law does not expressly limit it to minorities.

IV. Key United States Supreme Court Cases.

- 1. *Avery v. Midland County*, 390 U.S. 474 (1968) (applying equal protection requirement to local government districts; district with 67,000+ compared with districts of less than 1,000).

2. *Baker v. Carr*, 369 U.S. 186 (1962) (redistricting is no longer a political question).
3. *Bush v. Vera*, 517 U.S. 952 (1996) (racial gerrymandering, Texas, plurality, race was predominant factor; strict scrutiny, not narrowly-tailored to further a compelling governmental interest).
4. *Colegrove v. Green*, 328 U.S. 549 (1946), plurality – overturned largely by *Baker v. Carr*, held redistricting was a political question.
5. *Davis v. Bandemer*, 478 U.S. 109 (1986), attempted to address political party gerrymandering; plurality, not very helpful.
6. *Easley v. Cromartie*, 532 U.S. 234 (2001) (*Cromartie II*) (political gerrymandering is acceptable); (“At a *minimum* Plaintiffs must show that the legislature subordinated traditional race-neutral districting principles . . . to racial considerations.)
7. *Gomillion v. Lightfoot*, 364 U.S. 339 (1960) (landmark voting rights case, Alabama’s exclusion of blacks in Tuskegee violated the 15th amendment; later recognized as an equal protection claim).
8. *Hunt v. Cromartie*, 526 U.S. 541, 547 (1999) (*Cromartie I*) (race must be the predominant factor motivating the legislature’s districting decision). (12th District of North Carolina), same as *Shaw v. Hunt*. Held it does not violate the constitution to create a Democrat district where the voting correlation was 95% black.
9. *Miller v. Johnson*, 515 U.S. 900 (1995), white voters in Georgia challenged the shape of a district, held intent to create a black district violated the equal protection clause.
10. *Mobile v. Bolden*, 446 U.S. 55 (1980). Intent is critical. Facially neutral electoral districting is constitutional, even if at-large elections dilute voting strength without more.
11. *Reynolds v. Sims*, 377 U.S. 533 (1964) (precursor to ruling that local government districts had to be roughly equal in population; held state districts were required to be so comprised).
12. *Shaw v. Reno*, 509 U.S. 630 (1993). (race must be considered under strict scrutiny under the equal protection clause, cannot just rely on avoiding a Section 2, Voting Rights Act problem.)
13. *Thornburg v. Gingles*, 478 U.S. 30 (1986) (Section 2 of the Voting Rights Act is violated if black and white voters are impeded to cause an inequality in the ability to elect their preferred candidates; prove requires a sufficiently large compact district; minority group is politically cohesive;

white electorate votes as a block); subsequent VRA decisions require a purpose or effect of decreasing minority voting power in order to prove a VRA violation; *Reno v. Bossier Parish School Board*, 528 U.S. 320 (2000), (*Bossier II*).

14. *Utah v. Evans*, 536 U.S. 452 (2002) (hot deck imputation of persons present not allowed for congressional count –)
15. *Vieth v. Jubelirer*, 541 U.S. 267 (2004)(plurality; political gerrymandering in and of itself not unconstitutional).
16. *Wesberry v. Sanders*, 376 U.S. 1 (1964)(landmark case; congressional districts need to be drawn as nearly as possible for one person one vote).

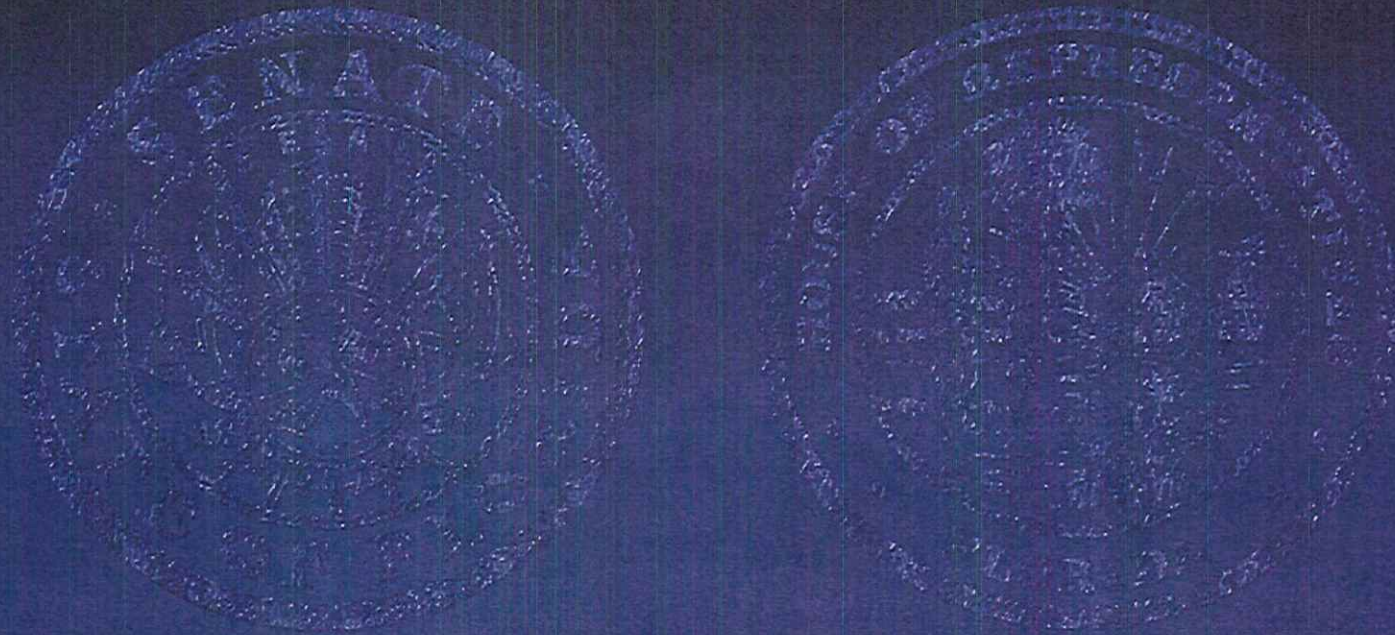
B. Back to the initial principles.

1. One person, one vote; slightly more leeway with local districts.
2. Apply traditional redistricting principles:
 - a. Protect incumbents.
 - b. Communities of interests.
 - c. Compactness.
 - d. Respect for existing political subdivisions (not dissecting a municipality unless necessary).
3. If you stray from them, you can be under a challenge if there is a racial disparity, either black or white under equal protection analysis
4. If you reduce or eliminate a majority/minority district, must be prepared to show it does not dilute voting rights.

V. Practical Considerations

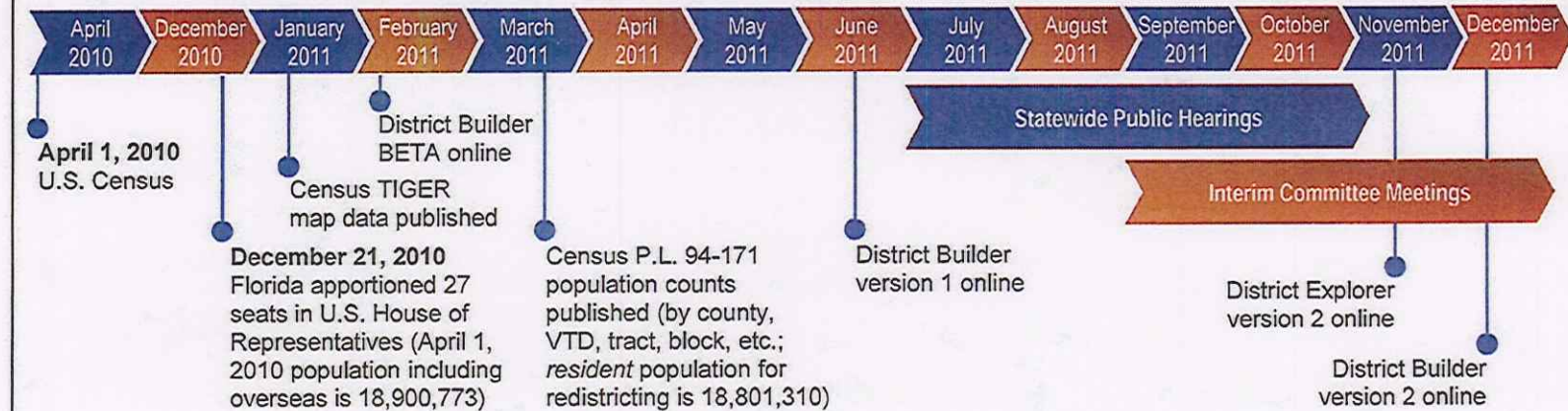
- a. Fully explain your goal of following traditional redistricting principles.
- b. Keep a good record; clarify matters that may be taken out of context or misunderstood.
- c. Keep your planning director or other statistical expert and your lawyer close.

Redistricting Timeline 2011-2012



*John Guthrie, Florida Senate Committee on Reapportionment
FSASE 2010 Mid-Year Winter Conference
January 12, 2011*

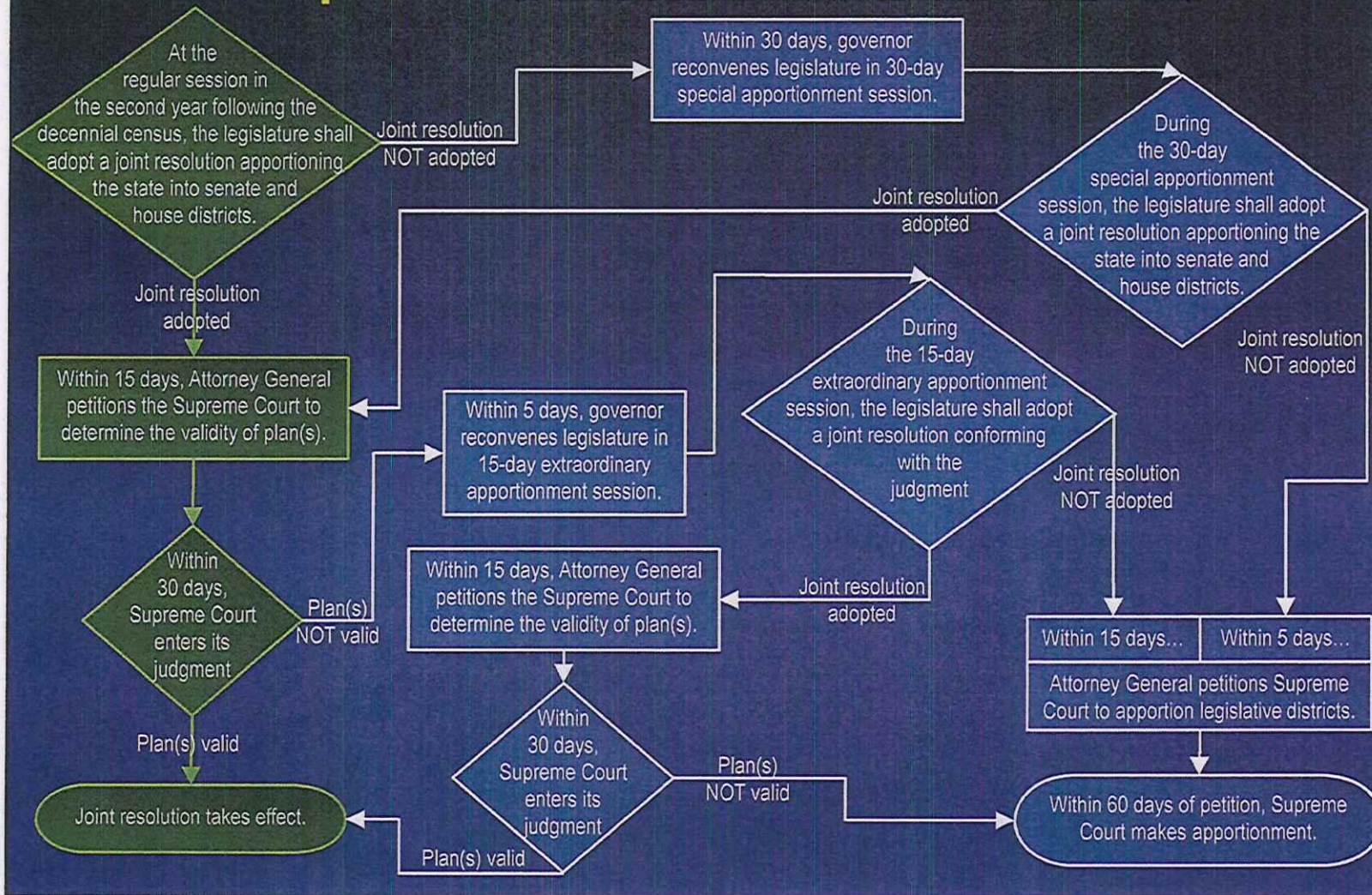
Reapportionment Timeline 2011



Reapportionment Timeline 2012

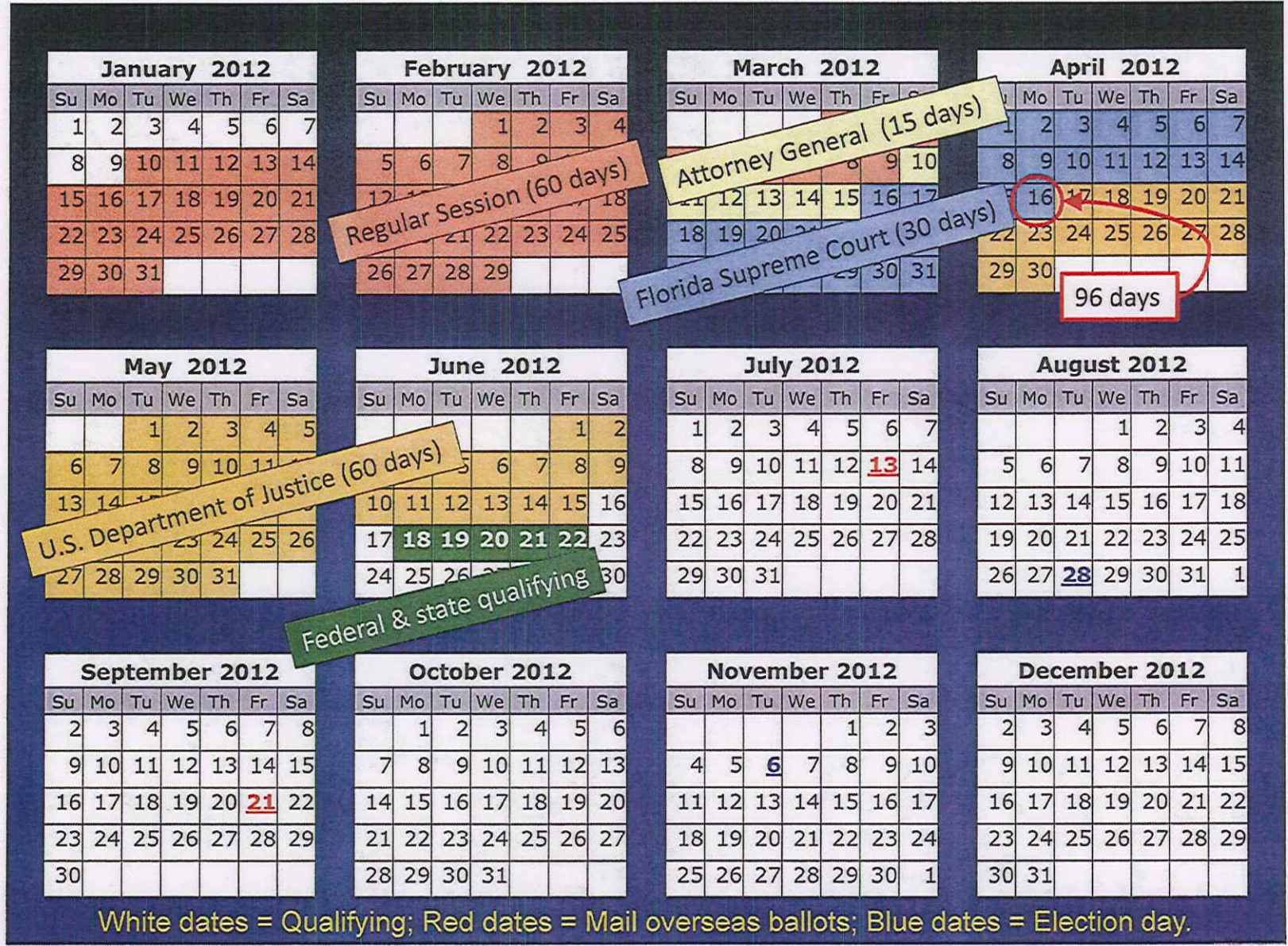


Short path *(see, Fla. Const. art. III, § 16)...*

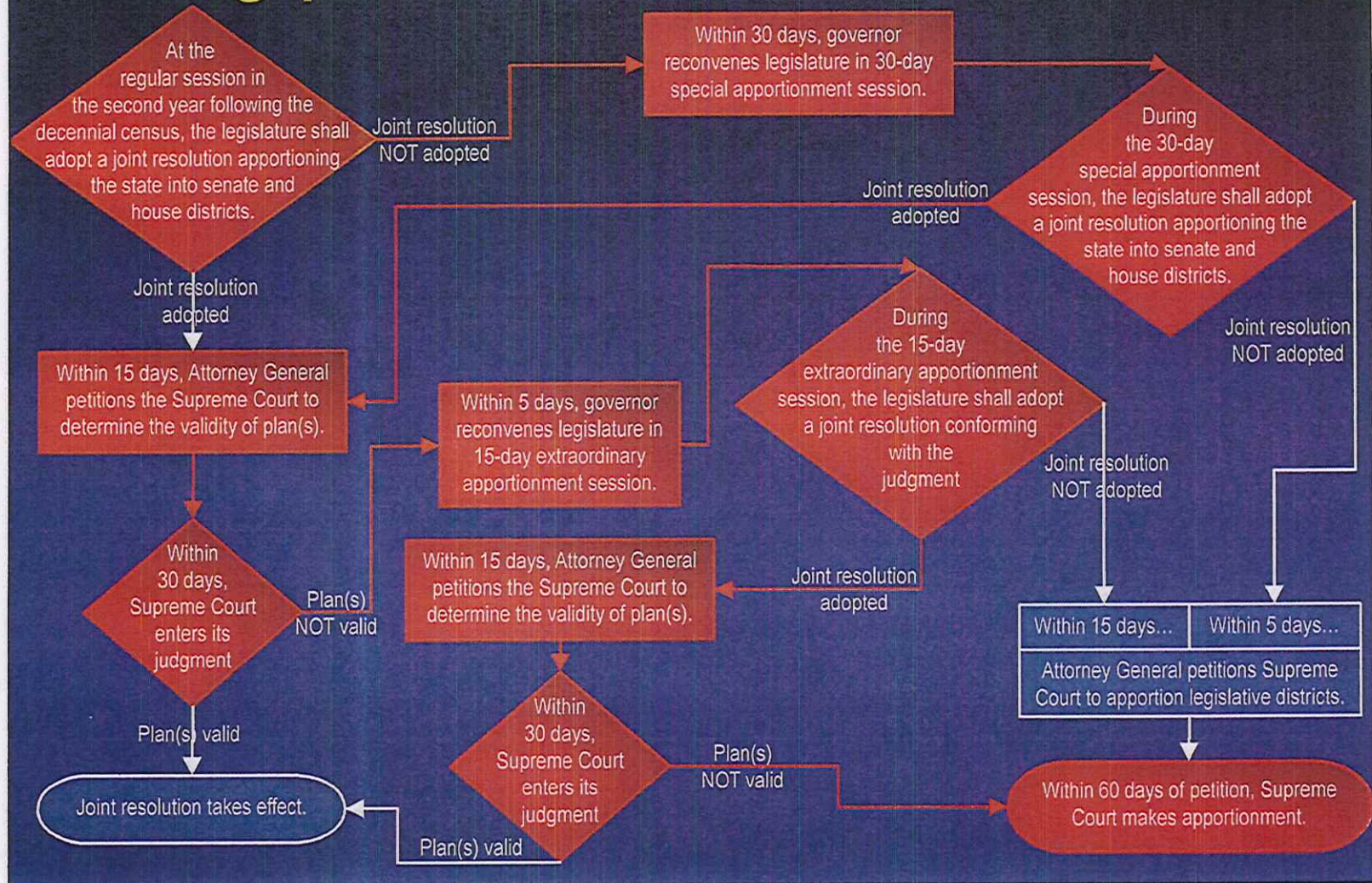


Short path (see, Fla. Const. art. III, § 16)...

Regular Session (joint resolution not adopted)	60 days
Attorney General petitions Supreme Court	<u>6</u> 45 days
Supreme Court enters judgment (plans valid)	30 days
Total number of days	<u>96</u> 105 days



Long path *(see, Fla. Const. art. III, § 16)...*



Long path (see, Fla. Const. art. III, § 16)...

Regular Session (joint resolution not adopted)	60 days
Extended session (joint resolution not adopted)	?? days
Governor proclaims special apportionment session	30 days
Special apportionment session (joint resolution adopted)	30 days
Attorney General petitions Supreme Court	15 days
Supreme Court enters judgment (plans not valid)	30 days
Governor proclaims extraordinary apportionment session	5 days
Extraordinary apportionment session (joint resolution adopted)	15 days
Attorney General petitions Supreme Court	15 days
Supreme Court enters judgment (plans not valid)	30 days
Supreme Court makes apportionment	<u>30 days</u>
Total number of days	260 days



District Builder - Mozilla Firefox

localhost https://localhost/db1/gui_framework/gui_framework.php

District Builder (alpha): Baseline_Senatorial (SEN) guthriej

Manage Plans Build Plan Analyze Plan Plan Preferences

Show dashboard
Show layers manager
Show utilities

Background Fill
 Active Plan
 Value Ramp
 Street Map

District Lines
 Active Plan Wireframe

Reference Lines
 Roads
 Waters
 Counties
 Cities/Places

Census Geography
 County
 VTD
 Block

City/Place
 Tract
 Block Group

Precinct Geography
 2000
 1998
 1996
 1994
 1992

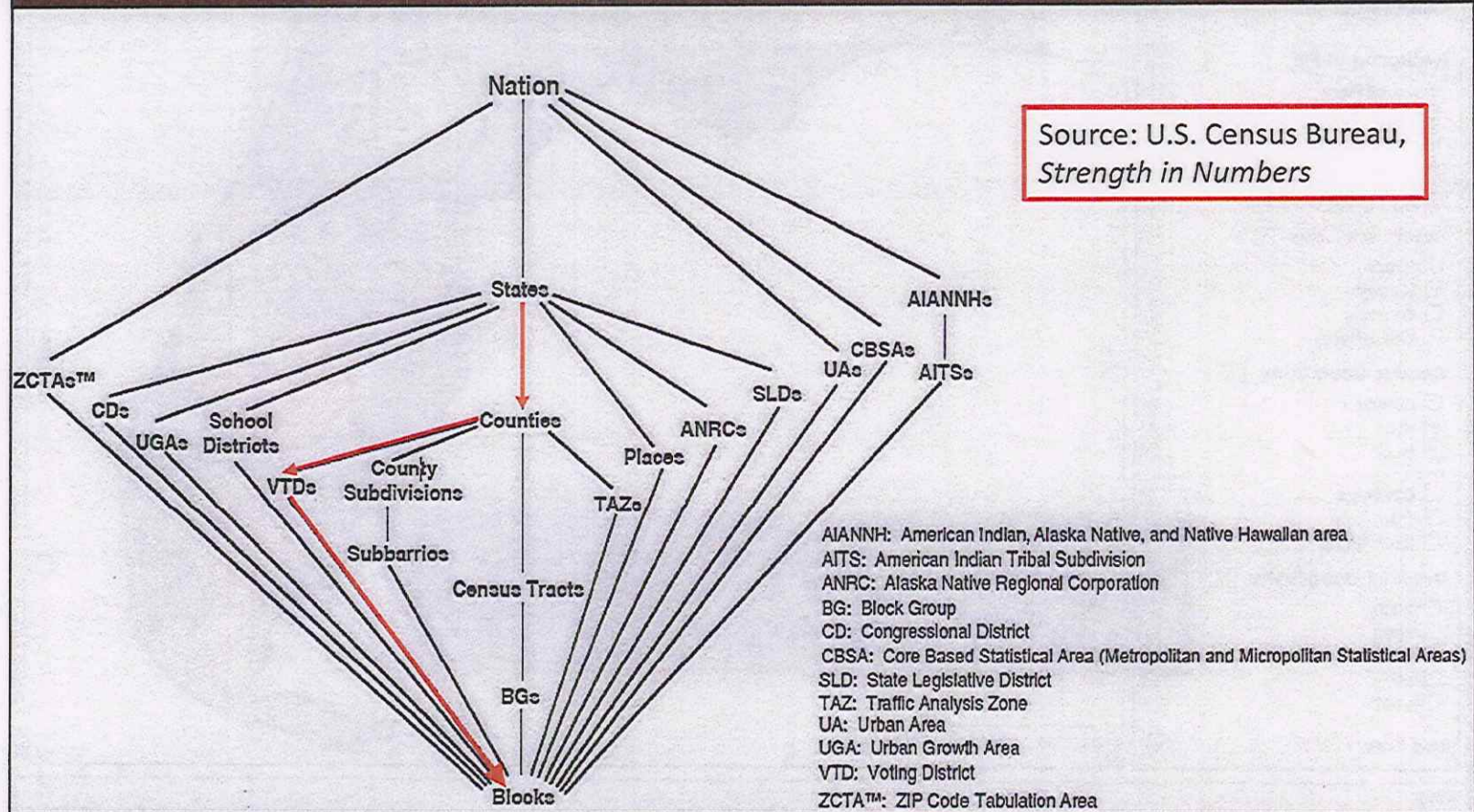
Map Scale 3,338,261

0 28 56 84 112 mi

Register for District Builder BETA
 (coming mid-February 2011).
 Send email request to DB.Help@flsenate.gov.

Census TIGER and P.L. 94-171

Hierarchical Relationship of Geographic Entities

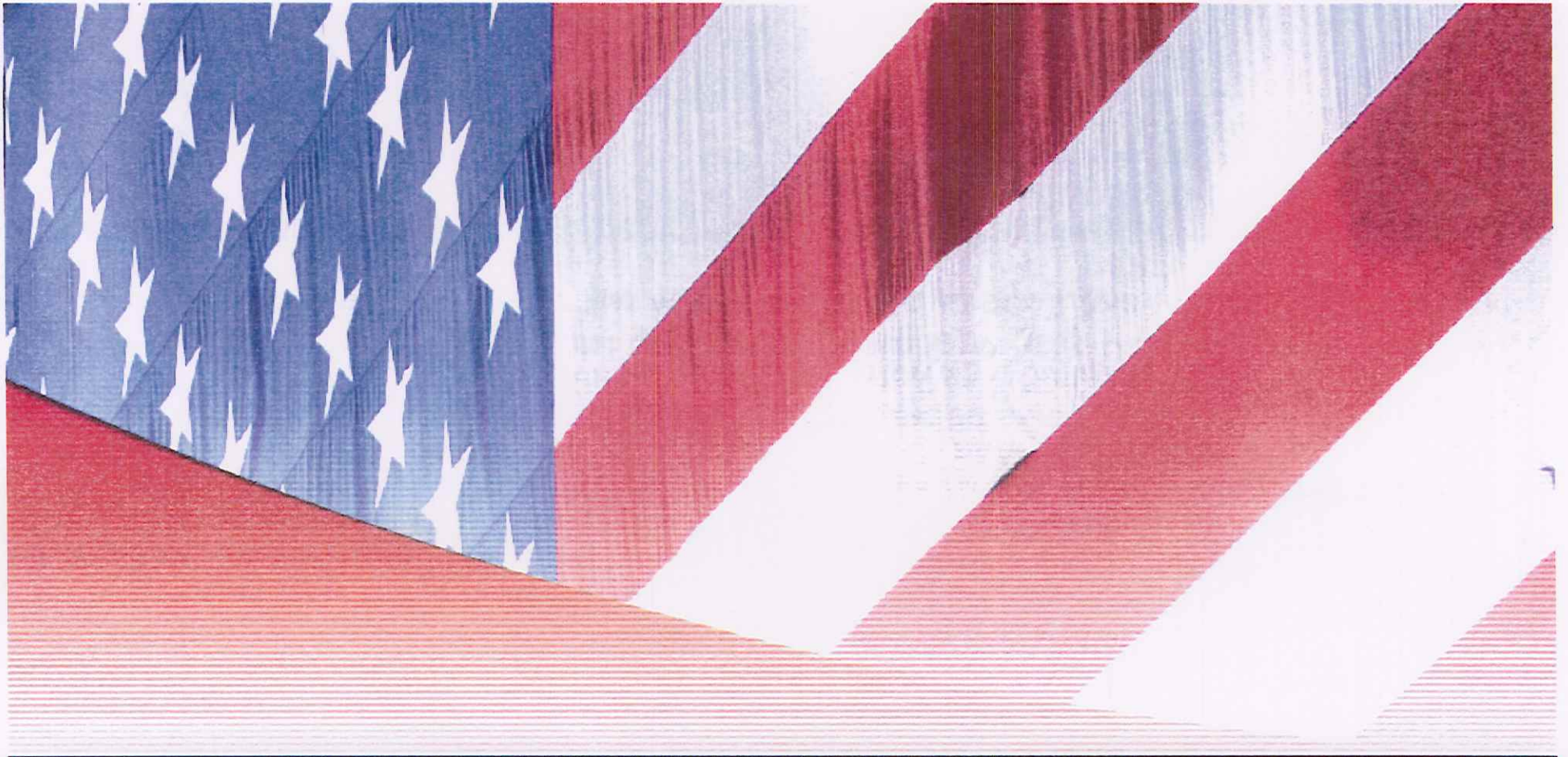


Resources...

- Find Your Legislators website: www.flsenate.gov/fyl
- U.S. Census redistricting website: www.census.gov/rdo
- U.S. Department of Justice, Civil Rights Division, Voting Section: <http://www.justice.gov/crt/about/vot/>
- NCSL, *Redistricting Law 2010* (Denver: NCSL, 2009): <http://www.ncsl.org/?tabid=19225>
- More NCSL redistricting resources: <http://www.ncsl.org/Default.aspx?TabID=773&tabs=855,29,641#855>

Contacts...

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Committee website: www.flsenate.gov
- Alex Kelly, Staff Director
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402 South Monroe Street, Tallahassee, FL 32399-1300
Phone: (850) 488-3928
Email: alex.kelly@myfloridahouse.gov
Committee website: www.myfloridahouse.gov



Reapportionment 2012

The Inside View

Line up Your Resources now...

- Budget – almost everyone of the items below will effect your budget
- Mapping program – staff adequately trained to run the mapping system. Do they need more training? Is your vendor on board?
- Media – PSA – local news papers – radio – TV – Social Media Facebook – Billboards – digital marquee
- Voter Contact – Voter Information Cards – Sample Ballots – Absentee Requests
- Precinct buildings/polling sites/ADA Surveys/phone hookups/
- Precinct signs/Precinct supplies/Election workers
- Contact Postal Services – Mailers –
- Prior Voting Statistics – Early – Absentee increase/decrease - polling sites (compare like elections presidential to presidential – governor to governor)
- Voting Tabulation and ADA Equipment –
- Census Information - Bilingual County – Cost of printing – ballots – all election related materials
- Notification to State of precinct changes – County Commission Agenda approval
- Website changes -
- Voter Registration system and Tabulation System Changes
- Ballot Order -

Reapportionment 2012

- We are considering less precincts, with the rise in early voting and absentees
- Consolidation or Change of precincts – will cause some voters, somewhere to travel further or a change to their current voting location on election day.
- Expect to hear from the voters – whether the change is good or bad.
- Equip your phone bank and staff to answer these questions appropriately concerning the precinct changes.

Reapportionment 2012

- Ballot Languages – the Voting Rights Act of 1965 s.203 4 (F)(4)
- Codified 42USC 1973 AA.1A, 42 USC 1973 B (F)(4)
- In 2002 a publication was put out by the Federal Registry (Justice Dept) naming the counties and languages they were to adhere for ballot language