

BRENNAN  
CENTER  
FOR JUSTICE

Brennan Center for Justice  
*at New York University School of Law*

161 Avenue of the Americas, 12th Floor  
New York, New York 10013  
212.998.6730 Fax 212.995.4550  
www.brennancenter.org

Ms. Ellen Freidin  
Campaign Chair, Fair Districts Florida  
2665 South Bayshore Drive, Suite M-103  
Miami, FL 33133

Dear Ms. Freidin:

I recently had the opportunity to review the Fair District Florida ballot initiatives pertaining to Florida's redistricting process. In a form similar to the analyses we have prepared of reform measures around the country, I have attached our analysis of the status quo, and of the improvements offered by the initiatives. In addition to offering the analysis itself, however, I wanted to write to congratulate you on your work.

It is evident that you have invested a great amount of preparation and care in the Fair District Florida proposals, and I am encouraged that the investment is already bearing dividends in the support that you have received to date. You have clearly studied the successes and failures of reform efforts past, and I am impressed by the extent to which you seem to have nimbly avoided many of the most common missteps.

In particular, your initiatives seem well-tailored to the complex context in Florida. Though discriminatory practices still limit minority opportunities and intervention under the Voting Rights Act is still necessary from time to time, minority communities have achieved substantial political gains, with significant representation in the body that currently draws district lines. And though Florida incumbents have ample opportunity for mischief, no redistricting scandal has energized the electorate recently. Both factors suggest that a successful initiative campaign will require a simple, uncontroversial message. Furthermore, the Florida Supreme Court has ruled that a single ballot initiative may regulate either the composition of a redistricting body or the criteria that guide its pen, but not both.

In this environment, the initiatives that you have put forward are well-crafted. They address the rules for drawing lines rather than the identity of the people with the pen, which not only avoids some of the most contentious debate about the institutions of redistricting reform, but may also help — at least relatively — mute opposition from insiders. The proposals are easy to read and to explain, which should greatly facilitate the initiative campaign. They elegantly resolve the many competing interests in drawing district lines, including competing reform interests; in our view, they emphasize many of the elements most important in producing districts that are truly representative, without unduly binding the hands of those drawing the lines in ways that produce unintended and unwanted consequences. And they bolster minority rights, with a backstop independent of federal legislation currently questioned by the courts. In other states with a different context, we would wish for even greater reform — including the ability to further limit the role of self-interested legislators, an end to the practice of apportionment using incarcerated persons to pad district size, more opportunity for public input, and protection for communities of interest of all kinds — but the choices that you have made are entirely sensible given the environment, and under the watchful eye of an engaged Florida Supreme Court should provide a substantial improvement over the status quo.

You have also entered into this campaign with broad editorial support and bipartisan backing, which is encouraging. I applaud your continued effort to recruit Floridians and prominent national figures from both major political parties, to ensure that the campaign is not characterized as a partisan plot in disguise.

In short, congratulations. The road ahead is long, but your efforts thus far seem to have placed you in very good stead.

Sincerely,



Justin Levitt  
Counsel, Brennan Center

**Redistricting Analysis**

Justin Levitt

**FLORIDA**  
**(status quo)**

**KEY POINTS:**

The state legislature currently draws both congressional and state legislative districts, subject only to federal constitutional and statutory limitations.

In the 2001 cycle, the process was subject to unified Republican control for both congressional and state legislative districts. The Department of Justice objected under the Voting Rights Act to preclearance of the plan for the state House of Representatives; the 2002 elections for the state House were accordingly conducted under a court-drawn plan based on an amended version of the map submitted by the state legislature. The legislature as a whole later ratified this amended plan, which governed state House elections in 2004 and beyond.

**PROCESS:**

Congressional and state legislative districts are currently drawn by the state legislature. State legislative districts are drawn by joint resolution, and not subject to gubernatorial veto; congressional districts are passed as standard legislation (and therefore subject to veto).

- **Independence from Legislators:** None.
- **Partisan Balance:** The process has only as much partisan balance as the legislature itself. It is possible that each house will be controlled by a different party, or that (for congressional districts) the governor will be of a different party than a united legislature, but it is also possible that (as in the 2001 cycle) there will be unified party control.
- **Minority Participation:** The process will feature as much diversity as the legislature itself; the body's substantial size makes such diversity relatively more feasible than alternatives dependent on significantly smaller institutions.
- **Public Input:** There are no specific provisions for the public to present or comment on plans.
- **Timing:** It is ambiguous whether Florida law prohibits the legislature from redrawing state legislative districts more than once per decade; there is no law regulating whether the legislature may redraw congressional districts more than once per decade.

**Redistricting Analysis**

Justin Levitt

**FLORIDA**  
**(status quo)**

**CRITERIA:**

Congressional and state legislative districts are, for most purposes, subject only to federal constitutional and statutory limitations. Florida law further requires that state legislative districts be either contiguous or overlapping, but this does not provide a substantial constraint.

- **Population Equality**: The current criteria allow substantial population disparity; some residents' votes may be more valuable than others. Florida law is ambiguous on whether the count conducted by the federal census (which counts incarcerated persons where they are incarcerated) must be used for state legislative apportionment purposes; the legislature has in past years expressly adopted the federal census count.
- **Minority Rights**: There are no provisions for minority rights other than federal law.
- **Compactness**: There is no provision encouraging or discouraging district compactness.
- **District Competition**: There is no provision encouraging or discouraging competition within a district.
- **Statewide Partisan Balance**: If there exists unified partisan control of the legislature (and, for purposes of congressional districts, the governor's mansion), that party will have the ability to drive statewide results favorable to itself. There is no provision otherwise encouraging or discouraging statewide partisan balance.
- **Preservation of Political Boundaries**: There is no provision encouraging or discouraging preservation of political boundaries.
- **Communities of Interest**: There is no provision encouraging or discouraging preservation of communities of interest.
- **Nesting**: There is no provision requiring that House districts be nested in Senate districts.
- **Incumbent Residence**: The current criteria do not prohibit consideration of the residences of incumbents, allowing intentional harm (or benefit) to individual legislators, but also reducing the likelihood of unintentional impact on incumbents.

**Redistricting Analysis**

Justin Levitt

**FLORIDA**  
**(Fair Districts Florida)**

**KEY POINTS:**

In keeping with a decision by the Florida Supreme Court allowing a single ballot initiative to regulate either the process or the criteria for drawing districts, but not both, the proposed amendments affect only the standards for drawing districts and not the process. They would prohibit the drawing of districts with the intent to favor or disfavor a party or incumbent, and would attempt to preserve minority rights. The amendments would also demand that, where feasible and not in conflict with the minority-rights objective above, districts be drawn so that they represent nearly equal population, are compact, and follow existing political and geographical boundaries.

**PROCESS:**

Because a single initiative cannot alter both the process by which districts are drawn and the criteria that govern them, the proposed amendments would leave intact the existing process for drawing congressional and state legislative districts.

- **Independence from Legislators:** None.
- **Partisan Balance:** The process has only as much partisan balance as the legislature itself. It is possible that each house will be controlled by a different party, or that (for congressional districts) the governor will be of a different party than a united legislature, but it is also possible that (as in the 2001 cycle) there will be unified party control.
- **Minority Participation:** The process will feature as much diversity as the legislature itself; the body's substantial size makes such diversity relatively more feasible than alternatives dependent on significantly smaller institutions.
- **Public Input:** There are no specific provisions for the public to present or comment on plans.
- **Timing:** It is ambiguous whether Florida law prohibits the legislature from redrawing state legislative districts more than once per decade; there is no law regulating whether the legislature may redraw congressional districts more than once per decade.

**Redistricting Analysis**

Justin Levitt

**FLORIDA**  
**(Fair Districts Florida)**

**CRITERIA:**

The proposed amendments would impose several new criteria on Florida's congressional and state legislative districts. First, the amendments would prohibit the drawing of districts with the intent to favor or disfavor a particular political party or incumbent. They would also prohibit districts drawn with the intent or result of abridging the equal opportunity of minorities to participate in the political process or elect representatives of choice.

The proposal also requires districts to abide by additional criteria, where they do not conflict with the standards above. It adds a mandate to draw districts as nearly equal in population as practicable, a mandate to draw districts that are compact, and a mandate to draw districts that follow existing political and geographical boundaries where feasible.

- **Population Equality:** Though the proposal does not correct the existing inequity in the federal census count (which counts incarcerated persons where they are incarcerated), it should substantially reduce the likelihood of substantial population disparities. The proposal also contains a safety valve allowing limited flexibility to create districts slightly smaller or larger than average, where necessary to avoid diluting minority opportunities.
- **Minority Rights:** The proposal creates a minority rights provision that echoes the federal Voting Rights Act, but is not tied to that Act, thereby providing independent state protection for racial or language minority populations.
- **Compactness:** The proposal creates a general requirement that districts be compact, where doing so does not undermine minority rights. This requirement, however, is not further defined and may be difficult to enforce.
- **District Competition:** The proposal forbids the drawing of districts with the intent to favor or disfavor a political party or incumbent, which may, with a credible judicial threat of enforcement, discourage blatant attempts to gerrymander districts in order to avoid competition.
- **Statewide Partisan Balance:** The proposal forbids the drawing of districts with the intent to favor or disfavor a political party or incumbent, which may, with a credible judicial threat of enforcement, discourage blatant attempts to create an artificially imbalanced statewide plan.
- **Preservation of Political Boundaries:** The proposal favors the preservation of political and geographical boundaries, where feasible, and where doing so does not abridge the rights of minority populations. Though the initiative text itself does not define the political boundaries in question, the ballot summary refers to city and county lines, which may influence later judicial interpretations of the provision.
- **Communities of Interest:** There is no provision expressly concerning communities of interest.
- **Nesting:** There is no provision requiring that House districts be nested in Senate districts.
- **Incumbent Residence:** The proposal does not prohibit consideration of the residences of incumbents, but it does forbid drawing districts with the intent to favor or disfavor a particular incumbent. Allowing the consideration of incumbents' residence should reduce any likelihood of an unintentional impact on incumbents.