

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, FLORIDA  
CIRCUIT CIVIL DIVISION

CORRINE BROWN and MARIO DIAZ-BALART,

Plaintiffs,

v.

DAWN K. ROBERTS, in her capacity as  
Interim Secretary of State of the State of Florida,

Defendant.

Case No.:  
2010CA1824

0-02  
BOB INZER  
CLERK CIRCUIT COURT  
LEON COUNTY, FLORIDA

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs, Corrine Brown and Mario Diaz-Balart, sue Defendant, Dawn K. Roberts, in her capacity as Interim Secretary of State of the State of Florida, and allege:

1. On September 28, 2007, the Florida Department of State, Division of Elections, approved an initiative petition prepared by FairDistrictsFlorida.org for circulation that establishes new criteria for Congressional redistricting. The Congressional Petition has since obtained the necessary number of signatures and has been certified for placement on the November 2010 general election ballot.

2. The proposed amendment to the Florida Constitution dealing with Congressional reapportionment ("Congressional Amendment") is as follows:

**Section 20. STANDARDS FOR ESTABLISHING  
CONGRESSIONAL DISTRICT BOUNDARIES**

In establishing Congressional district boundaries:

(1) 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.

(2) Unless compliance with the standards in this subsection conflicts with the standards in subsection (1) 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.

(3) The order in which the standards within sub-sections (1) and (2) of this section are set forth shall not be read to establish any priority of one standard over the other within that subsection.

(Exhibit A.)

3. The ballot title and summary for the proposed Congressional Amendment is:

**STANDARDS FOR LEGISLATURE TO FOLLOW IN  
CONGRESSIONAL REDISTRICTING.**

Congressional districts or districting plans may not be drawn to favor or disfavor an incumbent or political party. Districts shall not be drawn to deny racial or language minorities the equal opportunity to participate in the political process and elect representatives of their choice. Districts must be contiguous. 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.

(*Id.*)

4. Pursuant to Article IV, section 10, Florida Constitution, the Florida Supreme Court reviewed the Congressional Amendment and rendered an advisory opinion that its summary is clear and unambiguous and that it is limited to a single subject. *Adv. Op. to Att'y Gen. re Standards for Establishing Legislative Dist. Boundaries*, 2 So. 3d 175 (Fla. 2009).

5. The Congressional Amendment's ballot summary violates the strict standard for ballot clarity. Because the ballot summary misrepresents the legal effect and major ramifications of the Congressional Amendment, the Congressional Amendment must be withheld from the 2010 General Election Ballot.

6. The ballot summary overstates the protections afforded to minorities. The summary states that districts shall not be drawn to deny minorities the equal opportunity to elect representatives of their choice. In fact, the Congressional Amendment states only that minorities' ability to elect representatives of their choice — whether equal or unequal — will not be diminished.

7. The ballot summary also misleads by omission. It gives no hint that the Congressional Amendment's compactness and political and geographical boundary requirements will constrain the Legislature's ability to promote minority rights.

8. The ballot summary also purports to require that districts be as nearly equal in population as practicable. But the United States Constitution already imposes this requirement, and all of Florida's congressional districts comply with it. The negative implication that this requirement does not exist, or that Florida's Congressional districts are not as nearly equal in population as practicable, is false and misrepresents the legal impact of the Congressional Amendment.

9. The ballot summary is loaded with vague and ambiguous terms which even the sponsor of the Congressional Amendment is unable or unwilling to define. As a result, the courts ultimately will be forced to draw the districts, and voters will have no say.

#### **The Parties**

10. Plaintiff, Corrine Brown, is a citizen of the State of Florida and is registered to vote in Duval County. Since 1993, Brown has represented the citizens of Congressional District 3 in the United States House of Representatives. African-Americans comprise nearly half of the voting-age population in Congressional District 3.

11. Plaintiff, Mario Diaz-Balart, is a citizen of the State of Florida and is registered to vote in Miami-Dade County. Since 2003, Diaz-Balart has represented the citizens of Congressional District 25 in the United States House of Representatives. Hispanics comprise more than 60 percent of the voting-age population in Congressional District 25.

12. Defendant, Dawn K. Roberts, in her capacity as Interim Secretary of State of the State of Florida (the "Secretary"), is the chief elections officer of the State. It is her duty under Florida law to certify the items, including proposed constitutional amendments, that will be included on the statewide, general election ballot.

#### **Jurisdiction and Venue**

13. This Court has jurisdiction pursuant to Sections 26.012(2), Florida Statutes.

14. Venue is proper in this Court because the Secretary is headquartered in Leon County, Florida.

15. This Court has authority to grant declaratory and injunctive relief pursuant to Sections 26.012(3) and 86.011, Florida Statutes.

16. Under *Florida League of Cities v. Smith*, 607 So. 2d 397, 399 & n.3 (Fla. 1992), the Florida Supreme Court's review of the Congressional Amendment, *Adv. Op. to Att'y Gen. re Standards for Est'g Legislative Dist. Boundaries*, 2 So. 3d 175 (Fla. 2009), is no impediment this challenge.

#### **General Allegations**

17. All petitions to amend the Florida Constitution must be accompanied by a clear and unambiguous summary of the proposed amendment. § 101.161(1), Fla. Stat. (2009). The summary may not exceed 75 words. *Id.* The text of a proposed amendment will not appear on

the ballot — only the title and summary of the amendment are placed on the ballot. *Id.* It is the responsibility of the sponsor to prepare a clear and unambiguous summary. *Id.* § 101.161(2).

18. An initiative petition can only be submitted to the voters if the proposed amendment concerns a single subject and matter directly connected therewith, *see* Art. XI, § 3, Fla. Const., and the ballot summary is clear and unambiguous, *see* Art. XI, § 5(a), Fla. Const.; § 101.161(1), Fla. Stat. (2009). A proposed amendment involves multiple subjects if, without disclosure to the voters, it substantially affects preexisting constitutional provisions or multiple branches of government. A ballot summary is not clear and unambiguous if it is misleading.

19. A ballot summary that omits material information and thus precludes the voters from casting their ballots intelligently violates the accuracy requirement. *In re Adv. Op. to Att’y Gen.-Restricts Laws Related to Discrimination*, 632 So. 2d 1018, 1021 (Fla. 1994).

#### **COUNT I – MISLEADING BALLOT SUMMARY**

20. The allegations contained in Paragraphs 1 through 19 above are incorporated as though restated herein.

21. The Congressional Amendment contains two, distinct requirements that relate to the voting rights of racial and language minorities:

- Districts shall not be drawn with the intent or result of denying or abridging the **equal opportunity of minorities to participate in the political process**; and
- Districts shall not be drawn to **diminish the ability of minorities to elect representatives of their choice**.

The guarantee of an “equal opportunity” applies only to minorities’ participation in the political process—not to the ability of minorities to elect representatives of their choice. The Florida Supreme Court has made clear that these are two separate and distinct requirements. *Adv. Op. to Att’y Gen. re Standards for Est’g Legislative Dist. Boundaries*, 2 So. 3d at 188-89.

22. The ballot summary mischaracterizes the second of these requirements (the “Non-Diminishment Provision”). The actual text of the Congressional Amendment provides:

Districts shall not be drawn . . . to **diminish [the] ability** [of racial and language minorities] to elect representatives of their choice.

But the ballot summary describes the Non-Diminishment Provision as follows:

Districts shall not be drawn to **deny racial or language minorities the equal opportunity** to . . . elect representatives of their choice.

23. The summary is misleading. The Congressional Amendment does not guarantee minorities an equal opportunity to elect representatives of their choice. It provides in this respect only that minorities’ ability to elect representatives of their choice — equal or unequal — will not be diminished.

24. There is a material difference between a guarantee of equality and a mere protection against diminishment. A guarantee of equality would require the practical attainment of an objective ideal. A protection against diminishment only guards against a worsening in the existing ability of minorities to elect representatives of their choice. In its promise of equality, the summary grandly overstates the actual—and less protective—effect of the Congressional Amendment.

25. In a series of statements made to a committee of the Florida House of Representatives, the Sponsor repeatedly asserted that the Non-Diminishment Provision merely prevents future “harm” to the present ability of minorities to elect representatives of their choice:

That last phrase prohibits the drawing of any district or plan that will *reduce* the ability of minorities to elect minority representatives. Plain and simple.

Minorities’ ability, the ability of minority voters to elect representatives of their choice is not going to be *diminished* with this amendment.

What I do know is that these amendments will very clearly by their language forbid any legislator or any Legislature I should say, to adopt any plan that *diminishes* the ability of minority voters to elect representatives of their choice.

The . . . language says that districts cannot be drawn or plans cannot be drawn to *diminish* the ability of minority voters to elect representatives of their choice.

However, given that and given the language that is in our amendment, you cannot *diminish* the ability of . . . minority voters to elect representatives of their choice. So that is a protection that will be in the Florida Constitution. You will be violating the Constitution if you *diminish* the ability of minority voters to elect representatives of their choice.

What our language says is that you cannot . . . make districts or create a plan that *diminishes* the ability of minority voters to elect representatives of their choice.

What our amendments say is that . . . with regard to ability to elect representatives of choice, the Legislature cannot do anything to *diminish* that ability.

And we want to make sure that in doing all that there is *no harm done* and *no diminution* of . . . the rights of minority voters.

The language of the amendment says that you can't draw districts to *diminish* the ability to elect representatives of choice and that is—*that is the prohibition*.

In fact, that is the reason that the language is in there to ensure that . . . the ability of minority voters to elect representatives of their choice will not be *diminished*.

(Emphasis added.)

26. Conceptually and practically, non-diminishment is different from equality.

Contrary to the promise of the ballot summary, the Congressional Amendment does not require that the ability of minorities to elect representatives of their choice be affirmatively enhanced until equality is achieved. They merely prevent backsliding in relation to the status quo—equal or unequal.

27. The Congressional Amendment's sentence construction makes clear that minorities are not ensured an equal opportunity to elect representatives of their choice. The Congressional Amendment does ensure an "equal opportunity . . . to participate in the political process," and the drafter might have completed the sentence: "and to elect representatives of their choice." "Equal opportunity" would then have applied to the ability to elect the representatives of choice. This was not done.

28. As the Florida Supreme Court explained, "the negative verb 'shall not be drawn' in the proposed amendment[] modifies both clauses 'with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process' and 'to diminish their ability to elect representatives of their choice.'" *Adv. Op. to Att'y Gen. re Standards for Establishing Legislative Dist. Boundaries*, 2 So. 3d at 189. The phrase "equal opportunity" does not modify both clauses—except in the erroneous ballot summary.

29. The Sponsor has stated that the Non-Diminishment Provision is "somewhat similar to what is in Section 5" of the VRA. Where it applies, Section 5 ensures that no voting change "has the purpose or will have the effect of diminishing the ability of any citizen of the United States on account of race or color . . . to elect their preferred candidates of choice." 42 U.S.C. § 1973c(b). Section 5 does not guarantee equality, but merely prevents backsliding, or "retrogression." The benchmark for comparison is the status quo, and not the ideal of equality.

30. Like Section 5 of the VRA, the Congressional Amendment's Non-Diminishment Provision prohibits backward steps. It prohibits the undoing or reversal of gains already achieved by minorities. It does not, however, ensure an "equal opportunity . . . to elect representatives of their choice." Thus, a redistricting plan that neither diminishes the ability

of minorities to elect representatives of their choice, nor accords minorities an equal opportunity to elect representatives of their choice, would not violate the Non-Diminishment Provision.

31. In stating that the Congressional Amendment guarantees minorities the “equal opportunity to . . . elect representatives of their choice,” the ballot summary misrepresents the legal impact of the Congressional Amendment and gives voters a wrong and materially misleading impression.

**WHEREFORE**, Plaintiffs demand a declaration that the ballot summary of the Congressional Amendment is misleading and violates Section 101.161(1), Florida Statutes; an injunction prohibiting Defendant from directing that the Congressional Amendment be placed on the 2010 General Election Ballot; an award of costs; and such other relief as the Court deems just and proper.

#### **COUNT II – MISLEADING BALLOT SUMMARY**

32. The allegations contained in Paragraphs 1 through 19 above are incorporated as though restated herein.

33. The ballot summary is deceptive and misleading because it does not tell voters that the Congressional Amendment, through its compactness and political and geographical boundaries requirements, restrains the Legislature’s ability to draw districts in which minority voters will have the ability to elect representatives of their choice.

34. Currently, the Equal Protection Clauses of the United States and Florida Constitutions are the only legal constraints that act as a ceiling on the Legislature’s discretion to draw districts in which minority voters will have the ability to elect candidates of their choice.

35. If the Congressional Amendment is enacted, the Legislature will be subject to two new legal constraints on drawing districts: the requirements that districts be compact and that districts, where feasible, utilize existing political and geographical boundaries.

36. To avoid these new requirements, the Legislature would have to show that they conflict with the following, superior standard, which is also contained in the Congressional Amendment: "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."

37. Except to the extent necessary to comply with this requirement and the federal Voting Rights Act (the "VRA"), the Legislature's discretion to create districts that promote minority representation will be subject to the limitation that districts be compact and follow political and geographical boundaries..

38. The ballot summary does nothing to inform voters of the Congressional Amendment's significant effect on the Legislature's discretion under current law to promote minority representation.

**WHEREFORE**, Plaintiffs demand a declaration that the ballot summary of the Congressional Amendment is misleading and violates Section 101.161(1), Florida Statutes; an injunction prohibiting Defendant from directing that the Congressional Amendment be placed on the 2010 General Election Ballot; an award of costs; and such other relief as the Court deems just and proper.

### **COUNT III – MISLEADING BALLOT SUMMARY**

39. The allegations contained in Paragraphs 1 through 19 above are incorporated as though restated herein.

40. The ballot summary states that, under the Congressional Amendment, districts must be “as equal in population as feasible.” Thus, the summary suggests that current law does not already require districts to consist of populations as nearly equal as practicable, or that districts in Florida in fact consist of unequal populations. Both of the inferences that flow from the summary are false.

41. Federal law already requires that congressional districts be as nearly equal in population as practicable. *Reynolds v. Sims*, 377 U.S. 533, 577-78 (1964).

42. Florida’s current congressional plan, adopted in 2002, has a total deviation of one person. Twenty-two of the State’s twenty-five congressional districts have zero deviation and the other three districts only deviate by a single resident.

43. The ballot summary, therefore, misleads voters about the existing requirements applicable to the redistricting process and the legal effect of the Congressional Amendment.

**WHEREFORE**, Plaintiffs demand a declaration that the ballot summary of the Congressional Amendment is misleading and violates Section 101.161(1), Florida Statutes; an injunction prohibiting Defendant from directing that the Congressional Amendment be placed on the 2010 General Election Ballot; an award of costs; and such other relief as the Court deems just and proper.

#### **COUNT IV – MISLEADING BALLOT SUMMARY**

44. The allegations contained in Paragraphs 1 through 19 above are incorporated as though restated herein.

45. The ballot summary confuses and misleads voters because the summary uses the same phrase—“*drawn to*”—inconsistently to mean no fewer than three different things.

46. **First**, the ballot summary provides that districts may not be “drawn to” favor or disfavor an incumbent or political party. In this case, the phrase “drawn to” means that districts may not be drawn with the *intent* to favor or disfavor an incumbent of political party.

47. **Second**, the ballot summary provides that districts may not be “drawn to” deny minorities the equal opportunity to participate in the political process. In this case, the phrase “drawn to” means that districts may not be drawn with either the *intent* or *result* of denying the equal opportunity of minorities to participate in the political process.

48. **Third**, the ballot summary provides that districts may not be “drawn to” deny minorities the equal opportunity to elect representatives of their choice. In this case, the phrase “drawn to” means that districts may not be drawn with the *result* of diminishing the ability of racial or language minorities to elect representatives of their choice.

49. Thus, the phrase “drawn to” has three different meanings in the summary: (i) *intent*, as applied to the prohibition against favoring or disfavoring incumbents or political parties; (ii) *intent* or *result*, as applied to the prohibition against denying minorities an equal opportunity to participate in the political process; and (iii) *result*, as applied to the prohibition against diminishing the ability of minorities to elect representatives of their choice.

50. The inconsistent use of terminology within the ballot summary is misleading. The summary fails to inform the voters, clearly and unambiguously, whether the Congressional Amendment prohibits an intent, a result, or both, in the three instances to which the phrase “drawn to” applies. In using the identical phrase to denote three different and clearly distinguishable legal standards, the ballot summary confuses and dissembles the true legal impact of the Congressional Amendment.

**WHEREFORE**, Plaintiffs demand a declaration that the ballot summary of the Congressional Amendment is misleading and violates Section 101.161(1), Florida Statutes; an injunction prohibiting Defendant from directing that the Congressional Amendment be placed on the 2010 General Election Ballot; an award of costs; and such other relief as the Court deems just and proper.

#### **COUNT V – MISLEADING BALLOT SUMMARY**

51. The allegations contained in Paragraphs 1 through 19 above are incorporated as though restated herein.

52. The ballot summary suggests that the Legislature will be required to ignore incumbency. Under the VRA, it cannot do so. The Legislature must consider incumbency — and may favor an incumbent — to protect minority rights. By suggesting that the Congressional Amendment prohibits an intent to favor incumbents, the summary promises more than can be delivered.

53. Section 5 of the VRA, which applies to changes in electoral practices and procedures in five Florida counties (Collier, Hardy, Hendry, Hillsborough, and Monroe), prohibits changes that “lead to retrogression in the position of racial minorities with respect to the effective exercise of the electoral franchise.” *Georgia v. Ashcroft*, 539 U.S. 461, 477 (2003) (quoting *Miller v. Johnson*, 515 U.S. 900, 926 (1995)). Whether a change will result in retrogression “depends on an examination of all the relevant circumstances,” including “the extent of the minority group’s opportunity to participate in the political process.” *Id.* at 479.

54. One component of the opportunity to participate in the political process is the preservation of minority incumbents in positions of legislative influence and leadership. *Id.* at

483. Thus, the VRA requires the Legislature to weigh incumbency when it assesses compliance with Section 5, and permits it to favor minority incumbents as one means of compliance.

55. The Congressional Amendment, however, purports to deprive the Legislature of this important mechanism to ensure compliance with the VRA. Because it is foreseeable that the Legislature will intend to favor minority incumbents to ensure compliance with the VRA, the summaries' unqualified representation that an intent to favor incumbents is prohibited is inaccurate.

56. For the same reason, the Congressional Amendment itself contains an internal contradiction. The Congressional Amendment requires that districts not be drawn to deny or abridge "the equal opportunity of racial or language minorities to participate in the political process." The preservation of minority incumbents in positions of power is relevant to the requirement that districts maintain the equal opportunity of racial minorities to participate in the political process. This requirement thus conflicts with the prohibition against favoring incumbents.

57. The Legislature cannot fully assess and protect racial minorities' opportunity to participate in the political process unless it assesses and protects the achievements of minority incumbents. Because the conflicting requirements in Subsection (1) claim equal dignity in the hierarchy of requirements, the Congressional Amendment creates an irreconcilable contradiction. This internal conflict will prevent full compliance with all requirements contained in the Congressional Amendment.

**WHEREFORE**, Plaintiffs demand a declaration that the ballot summary of the Congressional Amendment is misleading and violates Section 101.161(1), Florida Statutes; an injunction prohibiting Defendant from directing that the Congressional Amendment be placed on

the 2010 General Election Ballot; an award of costs; and such other relief as the Court deems just and proper.

#### **COUNT VI – MISLEADING BALLOT SUMMARY**

58. The allegations contained in Paragraphs 1 through 19 above are incorporated as though restated herein.

59. The criteria mandated by the Congressional Amendment are vague, conflicting, and unworkable. The Congressional Amendment sets forth no adequate standards or sufficient rule by which its effect can be divined and its purposes accomplished. The Congressional Amendment does not prescribe clear and practical guidelines that might enable the Legislature to determine whether it has complied with those criteria. Nor does the Congressional Amendment provide judicially discoverable or manageable standards that would enable courts to construe and enforce their requirements coherently, objectively, and predictably. The Congressional Amendment expresses broad and subjective concepts in undefined terms — terms which voters can reasonably construe in an endless number of differing, conflicting ways.

60. The Congressional Amendment does not define “compact” or enable voters to distinguish between compact and non-compact districts. The Congressional Amendment does not define “political and geographical boundaries” or explain when it is “feasible” and when it is not “feasible” to utilize them. The Congressional Amendment prescribes no standard by which courts can determine the “intent” of a legislative body and of the Governor.

61. The Sponsor’s own public statements about the Amendment underscore that the ballot summary is misleading and that the Amendment therefore flies under false colors.

62. Notwithstanding differences in wording between the Congressional Amendment and the VRA, the Sponsor initially informed the public that the Congressional Amendment’s

voting-rights provisions are “identical” to and would “enshrine” in the Florida Constitution the protections in the VRA. *See How Will the FairDistrictsFlorida.org Amendments Work?*, Sponsor’s Advertisement (Mar. 5, 2009); *Stop Protecting Politicians*, TCPalm (Nov. 26, 2008); *Leaning Republican, Again*, Florida Trend (Sep. 1, 2008).

63. But after the Supreme Court’s decision in *Bartlett v. Strickland*, \_\_\_ U.S. \_\_\_, 129 S. Ct. 1231 (2009), the Sponsor stated (in an apparent acknowledgement of the different wording of the Amendment and the VRA) that the Amendment affords minorities “enhanced” rights and “greater protection than exists today in federal law.” *See Plan to Redraw State Districts Called Unfair*, Tampa Tribune (Jan. 12, 2010); *Race Enters Debate Over Redrawing Florida Political Districts*, Florida Times-Union (Dec. 14, 2009); *Two Ballot Proposals Stir Fears*, Sarasota Herald-Tribune (Nov. 27, 2009); *Initiative Prompts Questions of Racial Fairness*, Daytona Times (Nov. 19, 2009).

64. At the committee meeting on February 11, 2010, Ellen Freidin, the Chairwoman of Fair Districts Florida also noted that the language of the Amendment and the VRA is not identical. She further stated that, under the Amendment, the Legislature must use all possible means at its disposal to ensure that the ability of minorities to elect representatives of their choice is not diminished. But Ms. Freidin refused to identify any measure of the “ability” of groups to elect their preferred representatives. Nor did she explain how the Legislature should measure the “opportunity of racial or language minorities to participate in the political process.”

65. The recent public statements of the Chairwoman of the Congressional Amendment’s sponsor have only increased voter confusion and further clouded the meaning of the ballot summary.

**WHEREFORE**, Plaintiffs demand a declaration that the ballot summary of the Congressional Amendment is misleading and violates Section 101.161(1), Florida Statutes; an injunction prohibiting Defendant from directing that the Congressional Amendment be placed on the 2010 General Election Ballot; an award of costs; and such other relief as the Court deems just and proper.

#### **COUNT VII – MISLEADING BALLOT SUMMARY**

66. The allegations contained in Paragraphs 1 through 19 above are incorporated as though restated herein.

67. The criteria mandated by the Congressional Amendment are vague, conflicting, and unworkable. The Congressional Amendment sets forth no adequate standards or sufficient rule by which its effect can be divined and its purposes accomplished. The Congressional Amendment does not prescribe clear and practical guidelines that might enable the Legislature to determine whether it has complied with those criteria. Nor does the Congressional Amendment provide judicially discoverable or manageable standards that would enable courts to construe and enforce their requirements coherently, objectively, predictably, and systematically.

68. The Congressional Amendment expresses broad and subjective concepts in undefined terms—terms which the voters can reasonably construe in an endless number of differing and conflicting ways. The Congressional Amendment does not define “language minorities,” or state how large a group would have to be in order to qualify as a language minority, and thus does not identify the groups that will benefit from the new voting rights created by the Congressional Amendment.

69. On February 11, 2010, at a joint meeting of the Senate Committee on Reapportionment and the House Select Policy Council on Strategic and Economic Planning,

FDF refused to provide guidance. And, asked to define “language minorities,” FDF referenced the VRA, which defines “language minorities” to mean “persons who are American Indian, Asian American, Alaskan Natives or of Spanish heritage,” 42 U.S.C. § 1973f(c)(3), but then stated that “language minorities” only means “Hispanics,” contrary both to the VRA and to the definition espoused by three Justices of the Florida Supreme Court. *See Adv. Op. to Att’y Gen. re Standards for Establishing Legislative Dist. Boundaries*, 2 So. 3d 175, 189 (Fla. 2009).

70. The ballot summary’s use of the phrase “language minorities” in the plural will cause voters to believe that more than a single language minority group is intended to be protected by the Congressional Amendment.

71. If the intent of the Congressional Amendment was to merely protect those persons who are Spanish speakers, then the ballot summary could have been written to state that directly.

**WHEREFORE**, Plaintiffs demand a declaration that the ballot summary of the Congressional Amendment is misleading and violates Section 101.161(1), Florida Statutes; an injunction prohibiting Defendant from directing that the Congressional Amendment be placed on the 2010 General Election Ballot; an award of costs; and such other relief as the Court deems just and proper.

**COUNT VIII – MISLEADING BALLOT SUMMARY**

72. The allegations contained in Paragraphs 1 through 19 above are incorporated as though restated herein.

73. The ballot language also leads voters to believe that Legislature will be able to determine with certainty where members of language minorities reside and to take that into consideration when crafting districts.

74. The questionnaire sent out during the 2010 Census to every Florida household only asks 10 questions: (1) the number of people living in the dwelling; (2) additional people staying in the dwelling as of April 1, 2010 who were not counted in answer to question (1); (3) whether the dwelling is owned, rented, or occupied without paying rent; (4) the dwelling's telephone number; (5) the names of persons who occupy the dwelling; (6) the sex of persons occupying the dwelling; (7) the age and date of birth of persons occupying the dwelling; (8) whether any person occupying the dwelling is of "Hispanic, Latino, or Spanish origin" and, if so, whether they are "Mexican, Puerto Rican, Cuban, or other Hispanic origin"; (9) the race of the persons occupying the dwelling; and (10) whether any occupant occasionally stays elsewhere. There are no questions on the form about language, nor is any required by United States Public Law 94-171, the enactment that directs the Census Bureau to make Census data available to the states for purpose of redistricting and reapportionment.

75. Accordingly, there will be no bloc-level count of language use available at the time the Legislature draws the legislative and congressional districts. It will be impossible for the Legislature to accurately determine where language minorities reside, making it impossible to ensure that language minorities will have an "equal opportunity to participate in the political process and elect representatives of their choice."

76. The Census Bureau will no longer send a long-form to 1 out of 6 households asking about languages. See "2010 Census Constituent FAQs", Census Bureau, <http://2010.census.gov/partners/pdf/ConstituentFAQ.pdf>. Accordingly, there will be no Census block level count containing data on language available at the time the Legislature draws the Congressional Districts. It will be impossible for the Legislature to accurately determine where language minorities reside, making it impossible to ensure that they will have "the equal

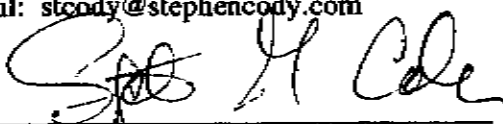
opportunity to participate in the political process and elect representatives of their choice” as stated in the proposed Congressional Amendment.

77. In lieu of the long Census form, the Census Bureau will be using its American Community Survey (“ACS”). Like a political poll, the ACS will use a random sample of U.S. residents. The annual results of the ACS will be available for all areas with populations of 65,000 or more. Areas with populations less than 65,000 require the use of multiyear estimates to reach an appropriate sample size for data publication.

78. However, the sample size will not permit disaggregating the Census data down to the level of a Census block, the lowest geographic level used in redistricting. For instance, the 2006 ACS only surveyed 152,155 of Florida’s estimated population of 18,328,340. With such a small sample size it will be impossible for the Legislature to precisely determine how many minority language speakers are spread throughout the hundreds of thousands of Census blocks, block groups, and tracts in the State of Florida.

**WHEREFORE**, Plaintiffs demand a declaration that the ballot summary of the Congressional Amendment is misleading and violates Section 101.161(1), Florida Statutes; an injunction prohibiting Defendant from directing that the Congressional Amendment be placed on the 2010 General Election Ballot; an award of costs; and such other relief as the Court deems just and proper.

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\_\_\_\_\_  
Fla. Bar No. 334685

# Exhibit A

## CONSTITUTIONAL AMENDMENT PETITION FORM

Under Florida Law, it is a first degree misdemeanor to knowingly sign more than once a petition or petitions for a candidate, a minor political party, or an issue. Such offense is punishable as provided in s. 775.082 or s.775.083. [Section 104.185, Florida Statutes]

<b>NAME:</b> <hr style="border: none; border-top: 1px solid black;"/>	
(Please print name as it appears on Voter I.D. Card)	
<b>RESIDENTIAL STREET ADDRESS:</b> <hr style="border: none; border-top: 1px solid black;"/>	
<b>CITY:</b> <hr style="border: none; border-top: 1px solid black;"/>	<b>ZIP:</b> <hr style="border: none; border-top: 1px solid black;"/>
<b>COUNTY:</b> <hr style="border: none; border-top: 1px solid black;"/>	
<b>Date of birth:</b> /     / <b>(or) Voter registration number:</b> <hr style="border: none; border-top: 1px solid black;"/>	

I am a registered voter of Florida and hereby petition the Secretary of State to place the following amendment to the Florida Constitution on the ballot in the general election:

ARTICLE AND SECTION BEING CREATED OR AMENDED: Add a new section 20 to Article III

**BALLOT TITLE:**  
**STANDARDS FOR LEGISLATURE TO FOLLOW IN**  
**CONGRESSIONAL REDISTRICTING**

**BALLOT SUMMARY:** Congressional districts or districting plans may not be drawn to favor or disfavor an incumbent or political party. Districts shall not be drawn to deny racial or language minorities the equal opportunity to participate in the political process and elect representatives of their choice. Districts must be contiguous. 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.

**FULL TEXT:** Add a new section 20 to Article III

**Section 20. STANDARDS FOR ESTABLISHING CONGRESSIONAL DISTRICT BOUNDARIES**

In establishing Congressional district boundaries:

- (1) 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.
- (2) Unless compliance with the standards in this subsection conflicts with the standards in subsection (1) 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.
- (3) The order in which the standards within sub-sections (1) and (2) of this section are set forth shall not be read to establish any priority of one standard over the other within that subsection.

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