

Solving Florida's Congressional Redistricting Dilemma in 2014

The Fair Representation Voting Solution and the Louisiana Two-Round Backup Plan

By Rob Richie, FairVote, Updated August 8, 2014

This report was updated on August 8th to reflect the August proposal by Florida state legislative leaders.

Summary:

Last month, Judge Terry P. Lewis found Florida's congressional redistricting plan to be in violation of the state constitution. Judge Lewis ordered the Legislature to submit a new district map by August 15th that will remedy constitutional violations in two districts, which will also affect up to ten surrounding districts and throw the state's plan for primary and general elections into disarray. The Florida legislature began a special session on August 7th and proposed a plan that made relatively modest changes in the two districts and five adjacent ones. In this memo, we propose two short-term remedies for allowing new districts to be used in Florida's 2014 election cycle. Although one of the two remedies conflicts with federal law, there is precedent from Louisiana in 2008 for state action overriding federal law involving congressional elections to resolve a state crisis.

- ***Fair representation voting in a multi-seat district involving affected districts:*** The best and simplest approach to hold congressional elections in 2014 in new districts would be to combine the five most directly affected congressional districts and enact the open ticket method of voting in a multi-seat district election in November. Doing so provides the best assurance of fair representation and meaningful choices for all voters. It is simple and administratively feasible. Although it would be in tension with a 1967 federal law mandating single member districts, there is [precedent from Louisiana](#) in 2008 for unilateral state action to resolve a state crisis.
- ***Louisiana election system in redrawn districts:*** Another approach would be to redraw the affected congressional districts in a way that remedies the violation, then re-open candidate filing for all affected districts and implement Louisiana's congressional election system in the affected districts, as was ordered by a federal court in August 1996 when 13 Texas congressional districts needed to be redrawn well into the election year. Louisiana's current system involves holding a general election in November among all candidates seeking office, with a contingent runoff between the top two candidates in December if no candidate secures an absolute majority of the votes in November. This remedy does not violate federal law, unlike an approach where the primary would take place in November and a general election in December.

Discussion:

In July, Florida circuit judge Terry P. Lewis ruled that two congressional districts drawn in the most recent redistricting cycle violate the "Fair Districts" constitutional amendments approved by voters in 2010 that ban partisan gerrymandering. On August 1, Judge Lewis [ruled](#) that the Florida State Legislature must submit a new district map by August 15 – one that will necessarily have to affect more than the two districts he specifically identified – and has scheduled an August 20 hearing on a proposed special election schedule that presumably will push back general elections in the affected districts into December. On August 7, the Florida legislature convened in a special session to debate a new plan. Although legislative leaders oppose implementation of any changes in the 2014 election cycle and have

threatened to appeal any effort by Judge Lewis to impose such changes, they proposed a new plan that adjusts the lines in the two affected districts and five adjacent districts.

Within the current confines of the debate about remedies to the state constitutional violation – that is, with single-member districts and separate primaries and general elections – these rulings present several complications for correcting the violation before Florida’s 2014 congressional elections. It was not feasible for the legislature to draw new maps in time for Florida’s regularly scheduled August 26th primary – indeed many absentee ballots have been printed and mailed, including to all military voters overseas, and early voting begins next week. Given the need for incumbents and other candidates to react to the revised districts, there must be extra time for candidates to file for office in the revised districts. If party primaries are maintained, primaries for all affected districts – and, according to Duval County election supervisor Jerry Holland, [potentially the entire election](#) for all offices including governor – would be pushed back to November, and general elections would be held no earlier than December, weeks after the November 4 date for general elections for Congress in the rest of the nation.

Having a primary in November rather than a general election violates federal statutes that mandate that all states hold regularly scheduled general elections for Congress on the first Tuesday after the first Monday in November. Although such a change would seem to require action by Congress or a federal judge, Louisiana governor Bobby Jindal imposed such a change in 2008 after Hurricane Gustav required postponing of the state’s August congressional primary during the brief period when Louisiana’s congressional elections had traditional primaries followed by general elections. (The revised 2008 schedule involved an October primary, a November Election Day runoff for primaries requiring a runoff, and a December general election, which ultimately was done in [two Louisiana congressional districts](#).)

Although Judge Lewis’ ruling only requires changes to Florida’s 5th and 10th congressional districts, several adjacent congressional districts will necessarily be impacted. Although the legislative leaders’ proposal introduced on August 7th would only change seven districts, Duval County’s Jerry Holland had [estimated](#) that as many as 12 districts could ultimately be redrawn. Even with a November-December election calendar, many candidates would have very little time to launch campaigns from scratch, and it is uncertain which current candidates will reside in which new districts. December elections also will have lower turnout than the regularly scheduled elections in November when the state will be electing all other offices, including governor.

Delayed election plans will also pose problems for overseas voters without special attention to the obligations of the MOVE Act. Overseas voters may have already cast ballots for the August 26 primary. If there is a delay, many of these voters would have insufficient time to cast a vote in December after a November election unless Florida adopts Louisiana’s innovation that has spread to four other states for congressional elections this year: sending overseas voters a ranked choice voting ballot, with that voter’s December vote going to the top-ranked candidate who advanced to the December ballot.

Changing district lines may also have implications for the Voting Rights Act and the potential of Section 2 challenges to uphold African American voting rights. One of the most vociferous opponents of Judge Lewis’ decision has been Congresswoman Corrine Brown, the 5th district Democrat. Rep. Brown was first elected in 1992, which was the first election in which Florida had a black-majority congressional district and the first since Reconstruction in which an African American in Florida won a congressional election. While Rep. Brown’s district has the appearance of a classic “gerrymander” and helps nearby Republican candidates because of its high concentration of Democratic voters, District 5 is – as with many of the least compact congressional districts – a majority-minority district, with close to a majority (48%) of its

adult population being African American. Any new plan that makes the 5th District more compact may reduce the percentage of black voters in the district and, if diluting the votes of African American voters, leave the state open to a challenge under Section Two of the Voting Rights Act.

The Fair Representation Alternative: The Open Ticket

Instead of redrawing district lines and postponing the election, Florida legislators could address the state constitutional violation by adoption of a fair representation voting method in a larger multi-seat district. We have created a plan for the entire state that would give a meaningful vote to every voter in every election. As a short-term remedy, simply combining five existing districts into a larger “super district” and electing its five representatives with a candidate-based fair voting method, the 2014 elections could continue as scheduled, racial minority representation could be preserved (or increased), and partisan fairness could be achieved. After the 2014 election, the legislature would have time to introduce a new district plan for the 2016 election that complies with the Fair Districts amendments.

The particular fair representation voting system that FairVote recommends in this election is called “**open ticket**” voting, which is similar to the single vote method used in Lake Park, Florida. This system provides an identical experience for voters to the standard single-member plurality voting model: voters consider candidates and cast a single vote. Here are open ticket system’s key components:

- **Voters:** Voters cast a single vote for one candidate in November. This vote counts for the candidate and, if that candidate is associated with a political party, also for that party. Such single vote systems with at-large elections are used in a number of American localities, including Florida’s Lake Park, and have repeatedly been upheld as a viable remedy to minority vote dilution by the Department of Justice and federal courts.
- **Determining winners:** Votes for every candidate in the five-seat super district are totaled. The collective votes for each party’s candidates are also totaled. The five seats are allocated to parties’ candidates in proportion to their share of the vote using a proportional representation formula like that used by the Republican and Democratic parties to allocate convention delegates in many of their presidential primaries. Each party’s share of seats is filled by its candidates who won the most individual votes. An independent wins if exceeding the minimum share of votes necessary to win, which is just over one-sixth of the vote in a five-seat district.
 - *Example:* Suppose in a five seat district there are eight Democrats, seven Republicans and several minor party and independent candidates. Republican candidates collectively receive 52% of the general election vote, Democratic candidates win 44%, and the rest goes to other candidates. Under one formula, 16.7% of the vote would earn one seat, 33.4% would earn two seats, 50.1% would earn three seats, 66.7% would earn four seats, and 83.4% would earn five seats. That means that with 52% of the vote, Republicans would earn three seats. With 44%, Democrats would earn two. The district’s five seats would be filled by the three Republican candidates with the most votes and the two Democratic candidates with the most votes.
- **Value of approach:** This system is based on voting for individual candidates, but also results in a fair reflection of each party’s voting strength. No voter would be denied a meaningful vote, and a party would not be hurt by having “too many candidates” because all votes count toward both

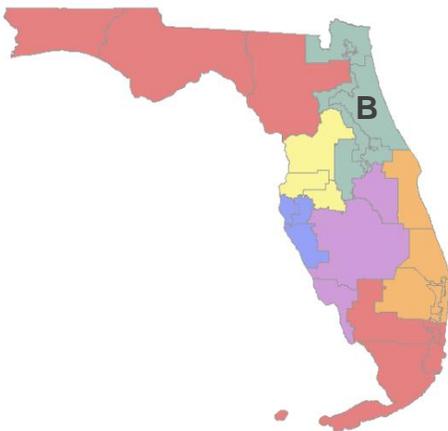
the individual candidate and that candidate’s party. Consistent with the Voting Rights Act, this remedy can prevent minority vote dilution by lowering the threshold of votes necessary to win a seat. It would provide minimal disruption to voters and election officials and avoid new costs.

- **Options for primaries and party nominations:** Florida would have options for implementing the open ticket system in 2014 in the affected districts. After a larger district is drawn by combining existing districts, one approach would be to hold primaries in each single member districts as scheduled. Doing so would limit each party’s nominees in November to no more than five, but also not allow new candidates to get into the election. A second approach would be to allow parties to nominate as many candidates as they wish – including new ones who haven’t filed – through a private process. The third and simplest approach would be to allow all candidates to run on the November ballot and give them the option to declare their party association.

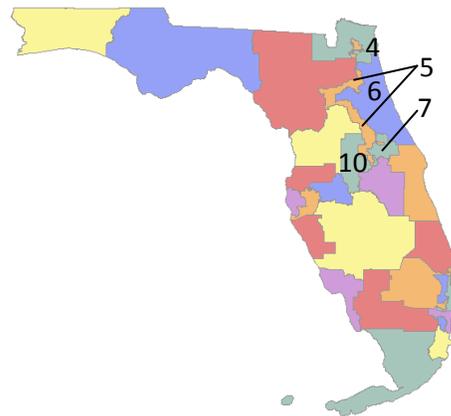
FairVote’s Five-Seat District Fair Representation Plan to Remedy the State Constitutional Violation

Judge Lewis has required that two districts must be redrawn: the heavily Democratic District 5 and the Republican-leaning District 10. The lines defining these districts of course affect the adjacent districts, and we believe the best approach would be to create a new five-seat “super district” out of five existing districts: Districts 4, 5, 6, 7 and 10. District B on this super district map comes from a [plan that FairVote created](#) for Florida’s delegation in 2012 by putting adjacent districts together – including District 4 that the August 2014 legislative plan leaves intact despite the obvious gerrymander involving District 5. As shown below, District B would stretch east from Winter Haven past Orlando to the coast and north to the Georgia border, including Jacksonville. By combining existing districts, no new lines must be drawn.

Fair Representation Super Districts



Current Affected Districts (4, 5, 6, 7, 10)



With five seats, the threshold to win a seat would be 16.67% of the vote, with each increase of that percentage among like-minded voters resulting in an additional seat. Here is the data for this district, with partisanship reflecting FairVote’s reliable gauge of likely partisan outcomes based on the difference between the percentages of the vote won by Barack Obama and Mitt Romney in the district and their national averages. The racial data is drawn from our analysis of the 2010 Census.

District	Partisan Index (GOP)	Party Outcome (current)	White VAP	Black VAP	Latino VAP	Asian/ Other VAP
Cong. District 4	66.1%	R	74.8%	12.9%	6.7%	5.6%
Cong. District 5	30.4%	D	35.6%	50.1%	11.1%	3.2%
Cong. District 6	60.1%	R	82.7%	9.0%	5.7%	2.6%
Cong. District 7	54.3%	R	69.2%	9.0%	17.0%	4.8%
Cong. District 10	55.8%	R	69.2%	11.1%	14.2%	5.5%
Super District B (totals for all CDs)	54.3%	2 Safe R, 1 Lean R 2 Safe D Projected	67.1%	18.1%	10.9%	3.9%

Partisan Analysis: Under this plan, backers of Republicans and Democrats would each have the votes in the super district to easily elect two candidates. The fifth seat would be hotly contested between the parties and independents, with Republicans having a clear edge given the overall partisanship of the district of 54.3% Republican. Note that under the current lines that violate the Fair Districts amendment, Republicans won four of these five seats in 2012, but Mitt Romney barely won a majority in Super District B, and two of the districts are within range of Democrats over the course of the decade.

Voting Rights Analysis: African American voters are well above the 16.67% victory threshold, and an experienced incumbent like Corrine Brown would be well-positioned to win. If able to secure support from coalitions of other voters, candidates of choice of Latino voters also would be far better positioned to win than in the current single member district plan.

Upholding Fair Districts Principles: Super District B maintains the outer boundaries of the existing districts, which makes the plan less compact than is ideal. But it is far more compact than the current plan, particularly the unconstitutional Districts 5 and 10.

Federal Law: The single vote system has been consistently upheld as legal in federal courts and been precleared for use in many local elections. The “open ticket” version of the single vote system has not been used in the United States, but there is every reason to believe that it would not pose legal issues, given that it is consistent with the one-person, one-vote principle. Although no multi-seat state legislative districts are used in Florida today, they have a long history of use in the state, and were used as recently as the 1970s, when the overwhelming majority of Florida state legislators were elected in multi-seat elections. There also is a [long history](#) of U.S. congressional elections being conducted in multi-seat districts, with more than a fifth of all House seats being elected in multi-seat elections before the first federal law mandating single member districts in 1842. This mandate has not been consistently in place since 1842, having most recently been re-imposed in 1967.

Although holding the election in a multi-seat district would be in tension with the 1967 mandate, there is precedent for states exercising their general constitutional power to determine the time, place and manner of elections under special circumstances. For example, in the wake of Hurricane Gustav, Louisiana governor Bobby Jindal rescheduled his state’s congressional elections in 2008 in such a way that some general elections were not held until December, notwithstanding a federal law setting a uniform congressional general election date.

The Open November Election System: The Louisiana Model

Although an open ticket election would be simpler and easier to administer (and guarantee fairer partisan outcomes), time could be allowed for new districts to be drawn that remedy the violations in

Districts 5 and 10 with as little effect on other districts as possible, if combined with Louisiana's election method for the 2014 election cycle. This approach is well-tested, not only in Louisiana, but also in Texas in 1996 after federal courts ordered a redrawing of some congressional districts and enacted this voting method. Here is the Federal Elections Commission description of the 1996 case in Texas:

In August 1996, the U.S. District Court for the Southern District of Texas, in *Vera et al. v. Bush et al.*, redrew district boundaries, invalidated the results of the primary and runoff elections, and ordered new elections in 13 congressional districts. In the districts noted, candidates participated in a special general election on November 5, 1996. Where no candidate received a majority of the votes cast, a runoff election was held on December 10, 1996, between the top two vote-getters, regardless of party. <http://www.fec.gov/pubrec/fe1996/hrtx.htm>

Although much more expensive for taxpayers than the use of a multi-seat district with the open ticket system, the Louisiana method is administratively feasible and clearly in compliance with federal law. It gives potential candidates time to react to the new district lines and file for office, with voters having a full range of choices in November. It upholds majority rule by requiring winners to gain a majority of the vote. It does have certain implications worth highlighting:

- *Affected districts:* The Florida legislative leaders' plan unveiled on August 7th makes changes to seven districts, although other proposals would affect as many as 12 districts. The Texas ruling in August 1996 affected 13 congressional districts in which the Louisiana system was imposed.
- *Voter turnout:* Assuming all other Florida elections take place on November 4th, then turnout in congressional elections in December would almost certainly be reduced. If the state were to keep a primary followed by a general election, this would mean every affected district would have a general election with lower – and potentially less representative – turnout. However, if the Louisiana (and Texas 1996) system were used, most elections likely would be decided in November without the need for a runoff.
- *Voting rights:* This proposal assumes that new congressional districts can be drawn that are consistent with Section Two of the Voting Rights Act. Changes could open the state to litigation, however, and potentially, undercut opportunities for African American voters to elect a preferred candidate in the affected part of the state. Having a lower turnout December election also has the potential to create voting rights concerns.

Conclusion

Judge Lewis's decision on congressional districts 5 and 10 shows that the Fair Districts amendments have at least some real teeth and deserve respect. But given the timing of the case and the decision, it has created a messy situation for Florida voters and election officials. Plans that involve postponing elections and a last-minute redrawing of districts could harm voters as well as racial representation and come at a great cost to taxpayers. The one-time use of fair representation voting in a super district would resolve the logistical issues with Florida's 2014 congressional elections and allow the elections to be decided on Florida's current timetable. The Louisiana system provides another credible alternative that does not involve use of multi-seat districts, although it would result in sharply increased costs for the state and potential complications for voters, candidates and minority voting rights.

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