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Analysis of Financial Impact of
Legislative and Congressional Districting Initiatives

- The districting initiatives will dramatically expand the scope and complexity of litigation to determine the validity of each new plan of apportionment. The initiatives will increase the cost of litigation involving legislative and congressional apportionment plans to levels at least seven to ten times those experienced in the most recent apportionment.

- Article III, Section 16(c) of the Florida Constitution requires the Florida Supreme Court to determine the validity of any state legislative apportionment plan and directs the Court to "permit adversary interests to present their views."

- The Court's review traditionally has been "extremely limited." *See In re Constitutionality of House Joint Resolution 1987*, 817 So. 2d 819, 824 (Fla. 2002). The Court has analyzed only the plan's compliance with constitutional requisites—specifically, the federal one-person, one-vote requirement and the state requirement that districts contain contiguous, overlapping, or identical territory. *Id.* It does not review compliance with federal or state statutes, including the federal Voting Rights Act, in part because such review would be too "fact-intensive" for the thirty-day review period. *Id.* at 825.

- Challenges to the validity of particular districts under Section 2 of the Voting Rights Act and, on a political gerrymandering claim, under the Equal Protection Clause, have not been entertained by the Supreme Court and have been resolved in local litigation involving only limited areas of the apportionment plan.

- Because the initiatives would create new state constitutional imperatives, the Court would review the plan's compliance with its requirements despite their fact-intensive nature. The Court's review would extend to (1) whether the plan or any district was intended to favor or disfavor a party or incumbent; (2) whether the districts have the intent or effect of denying or abridging the opportunity of racial or language minorities to participate in the political process or their ability to elect representatives of their choice; (3) whether districts are as nearly equal in population as practicable; (4) whether districts are compact; (5) whether districts, to the extent feasible, employ existing political and geographical boundaries.

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- The determination of these issues is exceedingly more complex and intricate than those the Court has traditionally examined. It will require the Court to undertake new and probing inquiries regarding the intent of the Legislature with respect to each district and the plan as a whole, the effect of each district on the political influence of racial and language minorities throughout the state, the compactness of each district, and the feasibility of using political and geographical boundaries.

- More specifically, and simply by way of example, the requirement that every district be drawn so as not to favor or disfavor any incumbent or political party will spawn challenges to virtually every district, census tract by census tract, without guidance on what "favor" or "disfavor" means in this highly specialized context.

- These inquiries are not only more fact-specific but also more subjective and malleable than those previously considered by the Court. The Court will be required to create new legal standards for evaluating the intent of the Legislature and the political influence of minority groups, to define the concept of compactness, and to engage in a completely subjective analysis of whether the use of existing boundaries would have been feasible.

- This review will take place district by district and will require the Court to consider the views of adversary interests. The new subjective and fact-specific inquiries will subject each district individually to attack, whether by political parties, incumbents, challengers, or interest groups, and will invite a proliferation of experts to analyze each district according to the new constitutional standards. Adversary interests can be expected not only to assail the legislatively drawn plan, but to present plans that each purport to comply with the constitutional mandate. The thirty-day period allotted to the Court will likely require it to appoint special masters to evaluate the evidence and argument presented by adversary interests. The Legislature, instead of offering argument on a limited number of objective issues, will be required to defend every boundary of every district against every attack which such interests might bring in opposition to the apportionment plan. And a judicial revision of the apportionment plan, without regard to the Voting Rights Act, will likely spawn additional challenges under Section 2 in local litigation.

- Congressional districting plans are not subject to review by the Supreme Court but are liable to challenge in federal court. The same increase in the scope, complexity, and cost of litigation is likely to attend the new standards for congressional districting. Individual challenges to specific districts will become increasingly likely and far more complex than it presently is.